1271

SUPREME COURT OF THE UNITED STATES.

No. 140.

THE COMMERCIAL MUTUAL MARINE INSURANCE COMPANY, APP'TS,

vs.

EDWARD OLIVER.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MASSACHUSETTS.

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In Equity.

EDWARD OLIVER
vs.
COMMERCIAL MUTUAL MARINE INSURANCE COMPANY.

The bill of complaint in this cause was filed in the clerk's office, on the 29th day of December, A. D. 1852, and in the words following, to wit:

To the Judges of the Circuit Court of the United States for the District of Massachusetts:

Edward Oliver, of Liverpool, England, in the United Kingdom of Great Britain and Ireland, merchant, a citizen of said United Kingdom, and subject of the Queen thereof, brings this bill of complaint against the Commercial Mutual Marine Insurance Company, a corporation created by a law of the State of Massachusetts, and established and doing business in said State.

And thereupon, your orator complains and says, that, on the seventeenth day of November, eighteen hundred and fifty-one, he was the sole owner of the ship or vessel, of the value of twenty thousand dollars, called the Liscard, then lying at Quebec, in the province of Lower Canada, and bound on a voyage from said Quebec to a port of discharge in said United Kingdom, on board which said ship there had been and was then laden, a cargo of merchandise, the property of various persons other than your orator, and which said merchandise your orator had agreed should be conveyed in said ship from said Quebec to said port of discharge, for a certain amount of hire or freight to be paid him by said parties respectively therefor, amounting in the whole to the sum of nine thousand dollars. And your orator being desirous to procure said vessel and said freight to be insured for said voyage, at and from said Quebec to said port of discharge, namely, the said ship for the sum of ten thousand dollars, valued at twenty thousand dollars, and said freight for the sum of five thousand dollars, valued at nine thousand dollars, against the perils of the seas and other risks usually contained in marine policies of insurance on property of such description, did, in writing by letter, bearing date November seventh, eighteen hundred and fifty-one, request his agent, one James E. Oliver, of said Quebec, to procure the same to be insured on account of your orator, and to have the policies of insurance thereon in the name of your orator, a copy of which letter, marked (A,) your orator hereto annexes and prays that the same may be taken as part of this, his bill of complaint.

And your orator further showeth unto your Honors, that said

James E. Oliver, afterwards, on the day of the same November, in compliance with the request of your orator, did, through one Henry McKay, of Montreal, broker, request one A. McLimont, of the city and State of New York, insurance broker, to procure said insurance upon said ship and said freight, to be made and effected at some proper and solvent Insurance Company in said New York, or in Boston, in said State of Massachusetts, and did cause to be transmitted to said A. McLimont, insurance broker, as aforesaid, a copy of your orator's said letter, bearing date the said seventh day of November; and thereupon the said McLimont, being unable to procure said insurance to be made and effected for a reasonable premium in said New York, did, in writing, authorize and request one David R. McKay, of said Boston, commission merchant, to cause said insurance to be made and effected by some proper Insurance Company in said Boston, which said written request and authority so given by said McLimont to said McKay, was and is contained in two certain letters written by the said McLimont to the said McKay, one of which letters bears date the twenty-eighth day of this same November, and the other of said letters bears date the twenty-ninth day of the same November; and your orator hereto annexes copies of both of said letters, marked (B and C,) and prays that the same may be taken as part of this, his bill of complaint.

And your orator further shows, that in said letter of said McLimont, bearing date the twenty-eighth day of said November, by accident and mistake, the said McKay was directed to cause said ship to be insured for the sum of eight thousand dollars, to be valued at the sum of sixteen thousand dollars, and said freight to be insured for the sum of four thousand dollars, and to be valued at the sum of seven thousand two hundred dollars; and in and by said letter of said McLimont to said McKay, bearing date the said twenty-ninth day of November, said mistake, was in part corrected, and said McKay was directed to insure said ship for the sum of ten thousand dollars, and to insure said freight for the sum of five thousand dollars; but by accident and mistake the sum for which said ship and said freight were to be valued thereon was wholly omitted.

And your orator further shows unto your Honors, that the said McKay, after receiving said letters on the twenty-ninth day of said November, did apply to the said Commercial Mutual Marine Insurance Company to make insurance upon said ship and freight for your orators, according to the order and request of said McLimont, and did then and there exhibit both said letters of said McLimont to said Insurance Company, with the intent to inform said Insurance Company as well of the relation of said McLimont as agent of the owners of said ship, as to enable them to determine the character of the rish to be insured; and said Insurance Company did thereafterwards read and examine said letters, and on the same day agree with said McKay, acting as the agent of your orator, to insure the said ship on the voyage aforesaid, at and from said Quebec, for the sum of

ten thousand dollars, to be valued at the sum of twenty thousand dollars, and to insure the said freight of said ship on said voyage for the sum of five thousand dollars, to be valued at the sum of seven thousand two hundred dollars, and to receive as a premium therefor the sum of eight hundred and twenty-five dollars.

And your orator further shows unto your Honors, that, thereafterwards, on the first day of December of the same year, the said Insurance Company, with the intent and design to carry into effect said agreement, did cause to be made a writing or policy of insurance, signed by the President and Secretary, bearing date the said first day of December, a copy of which is hereto annexed, marked (D,) which your orator prays may be taken as part of this, his bill of complaint, and did deliver said policy to said McKay, the agent of your orator as aforesaid, and did receive from said McKay, the agent of your orator, said premium of eight hundred and twenty-five dollars, which sum was thereafterwards by your orator repaid to said McKay.

And your orator further shows unto your Honors, that, although when said Insurance Company had so agreed to insure said ship and freight for the amounts aforesaid, it was well known to said Insurance Company that said A. McLimont was merely the agent of the owner of said ship and of the person entitled to, and solely interested in said freight, and that he, said McLimont, had no insurable or other interest whatever in either said ship or said freight, and that said McLimont was, by profession and pursuit, a mere insurance broker, and that he was acting as the agent of the person who owned said ship, and who was solely interested in said freight; and yet, by accident and mistake, said insurance on said ship and said freight was, by the terms of said policy, declared to be on account of said A. McLimont, and without adding thereto the word agent or any other term indicating that he, the said McLimont, was insured as said agent of the party owning said ship and interested in said freight, and without the usual clause commonly inserted in such policies, that said insurance was effected for whom it might concern.

And your orator further shows unto your Honors, that said Insurance Company knew and was distinctly informed by said McKay, by said letter of said McLimont to said McKay, bearing date the said twenty-eighth day of November, and submitted to and read by them as aforesaid, that said McLimont was the mere agent of and broker for the owner of said ship, and had no interest whatever in said ship or freight, except so far as he would be entitled to the usual commission of a broker for procuring said insurance; and that said Insurance Company did agree, consent, and understand, at the time said agreement to insure said ship and freight was made with said McKay, and before said policy so made to carry said agreement into effect was written and signed, that said insurance was to be made for the benefit and on the account of the owner of said ship; and that said McLimont was not the owner of said ship, nor

interested therein or in said freight, and that by mere inadvertence, accident, and mistake in writing said policy of insurance, it was omitted to be inserted in said policy that said insurance was made on account of said McLimont as agent and for whom it might concern.

And your orator further shows unto your Honors, that said policy was received by said McKay, and transmitted to the said James E. Oliver, the agent of your orator, and by him kept and retained in ignorance; that by the terms and legal effect thereof, no other interest was insured thereby save that of the said McLimont, and in the full understanding, as well by said McLimont, said McKay, and said Oliver, that the interest of your orator in said ship and freight to the extent of the sums named in said policy, was thereby insured and protected in accordance with your orator's directions, contained in his said letter to said James E. Oliver, bearing date the said seventh day of November.

And your orator further shows unto your Honors, that said ship Liscard, laden with goods to be carried on freight as aforesaid, sailed on the voyage described in said policy of insurance, on or about the nineteenth day of said November, and was in all respects, at the inception of the risk described in said policy, tight, staunch, strong, and seaworthy; and thereafterwards, while pursuing the voyage described in said policy, was, by the perils of the sea, on or about the third day of December, wholly broken, destroyed, sunk, and lost, and the whole of the cargo, so laden on board said ship, was by the same perils and at the same time destroyed, sunk, and lost, by means of which the said freight so insured, as well as said ship, became and were wholly lost to your orator.*

And your orator submits to your honors, that, by reason of the premises, he is justly and equitably entitled to have said mistake so made in drawing said policy of insurance corrected, and said policy reformed by inserting therein that said insurance was made on account of A. McLimont as agent, or for whom it may concern; and that the sums so insured by said company on said ship and said freight be paid to him accordingly.

And your orator further shows unto your Honors, that previously to this suit being commenced, on the tenth day of February last past, and since he applied to and requested and caused applications to be made to said Insurance Company to act toward your orator in such a way as is equitable and just, and to reform said policy as aforesaid, and to adjust and pay to him the sums so insured by them on said ship and said freight, and so lost to your orator as aforesaid by reason of the perils insured against in said policy, and exhibited to said Insurance Company the usual and proper proofs of said agency of said McLimont, and of said loss, and of his sole ownership of said ship, and sole interest in said freight at the time of said agreement so made with the agent of your orator by said

*See amendment.

Insurance Company to insure the same as aforesaid, and your orator well hoped that said Insurance Company would have yielded to his said applications and paid to him the sums so insured by them and lost by him as aforesaid.

But now so it is, may it please your Honors, that said Insurance Company doth absolutely refuse to comply with said requests.

And said Insurance Company sometimes pretended, that, at the time of writing and forming said policy, it was not known to them that said A. McLimont was not the owner of said ship and was an insurance broker, and acted in making said agreement as such broker or as agent for the owner of said ship. Whereas, your orator charges that said Insurance Company was informed by said McKay, orally, and also by said letter bearing date the said twenty-eighth day of November, that said McLimont was such broker, and acted in the making and causing to be made said insurance as the agent of the owner of said ship.

In proof whereof, you orator charges that, since the occurrence of the loss of said ship, the President of said Insurance Company, with whom, acting in behalf of said company, said agreement for insurance was made by said McKay, has declared to divers persons that, at the time of making said contract, he knew that said A. McLimont was a broker and agent, and not the owner of said ship or interested therein.

And as further proof thereof, your orator further charges, that, when the agents of your orator first applied to said Insurance Company as aforesaid, and exhibited to them the proofs aforesaid, said Insurance Company promised to pay the agent of your orator said loss within the period of sixty days therefrom; and that not until long afterwards, and after an application had been made by said Insurance Company to counsel learned in the law, did said Insurance Company pretend or allege that said policy was not on account of said A. McLimont as agent for the owner of said ship, and thereupon refused, and have ever since refused, to pay your orator the sums so insured as aforesaid.

All which actings, and doings, and refusals, are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises.

In consideration whereof, and forasmuch as your orator is remediless at and by the strict rules of the common law, and cannot have adequate relief save in a Court of Equity, where matters of this nature are properly cognizable and relievable:

To this end, therefore, that the said Insurance Company may, if they can, show why your orator should not have the relief hereby prayed, and may, under their corporate seal, in due and legal manner, full, direct, and perfect answer make to [such of the several interrogatories hereinafter mentioned and set forth and numbered as by note hereunder written, they are required to answer, that is to say:]*

* See amendment.

1. Whether it is not a fact that said Insurance Company made, subscribed, and delivered to the said David R. McKay a policy of insurance, of which the paper annexed hereto and marked (D) is a copy, and received the premium named therein, or how otherwise the facts should be stated.

2. Whether, prior to the drawing and subscribing said policy, an agreement was not made by said Insurance Company with the said McKay, by which said Insurance Company agreed to make a policy and insure said ship and said freight for the sums with the valuations and for the voyage named in policy and for the premium therein set forth.

3. Whether, previous to the making said agreement and before the drawing and subscribing said policy, any letters or communications of said A. McLimont to said McKay were not read to and handed and delivered to said Insurance Company, its President or officers, by said McKay, as containing his orders or instructions to procure such insurance, and whether the same were not read and examined by said Insurance Company, its President or officers, prior to the making said agreement and to the writing and signing said policy.

4. Whether, prior to the making said agreement and to the writing and signing said policy, two letters of said McLimont to said McKay, copies of which are hereto annexed, marked (B and C,) or two letters of similar import and substance, were not shown, read to, or delivered to said Insurance Company, its President or officers, by said McKay; and whether the same were not read or examined by said company, its President or officers, prior to the making said agreement or the writing and subscribing said policy.

5. Whether it was not known or communicated to, or understood by said Insurance Company, its President or officers, at the time of making said agreement or the drawing and subscribing said policy, or at any other prior period, and when, that said McLimont was an insurance broker by pursuit or occupation.

6. Whether it was not communicated to said Insurance Company, or agreed or understood between said Insurance Company and said McKay, at the time of making said agreement, or before said policy was written and signed, that the letters of said McLimont to said McKay, exhibited to or read by said Insurance Company, its President or officers, contained the facts known and the instructions received by him, said McKay, in relation to said insurance, and that said insurance should be so made and said policy written in such manner as to effect the objects and purposes disclosed by said letter.

7. Whether said McKay did not request or desire to have said policy so drawn as to carry into effect the design and purposes contained in said letters of said McLimont, and whether said Insurance Company, its President or officers, did not consent, and agree that the same should be so done; and if not, whether as to any part of the design and purposes contained in said letters, said Insurance Company, its President or officers, notified or communicated to said

McKay their unwillingness to give effect to or comply with the same.

And that said Insurance Company may be required, by a decree of this Court, to correct and reform said policy of insurance, by causing to be inserted therein, after the words "on account of A. McLimont," the word agent, or the words for whom it may concern, so by mistake omitted therein; and that said Insurance Company may be thereupon decreed to pay unto your orator the sums by them insured upon said ship and upon said freight so wholly lost to your orator as aforesaid; and that your orator may have such other and further relief in the premises as the nature and justice of his case requires, and to this Honorable Court shall seem meet.

May it please your Honors to grant unto your orator a writ of subpœna directed to the said Commercial Mutual Marine Insurance Company, commanding them at a day certain, and under a certain pain therein to be limited, to be and appear before your Honors in this honorable Court, then and there full, true, direct, and perfect answer make to all and singular the premises; and your orator will ever pray.

NOTE.—[The defendant is required to answer each of the interrogatories above written.] [See amendment.]

EDWARD OLIVER.
By S. BARTLETT,
His Attorney.

S. BARTLETT,
Of Counsel for Claimant.

[*See amendment, page* 19.]

(A.)

LIVERPOOL, November 7th, 1851.

JAMES E. OLIVER, Esq., Quebec:

DEAR SIR: Please insure, on best terms in New York, £2000 on the ship "Liscard," valued at £4000, and £1000 on freight, valued £18,000, at and from Quebec to port of discharge in United Kingdom, and advise me thereof per first mail, and send me the policies in due course. You will please let the policies be in my name. You will please also insure £500 Princess Royal, valued at £3500, and £500 on freight, valued at £2000; also £500 on Lanarkshire, value £3000; £500 on freight, value £1500; also £500 on ship Wakefield, value £800, and £500 on freight, value £1500. Please also say at what rate you can insure on ships "Tuskar," "Brandon," and Princess Royal, from England to San Francisco, west coast South America and United Kingdom, with coals out and guano home.

Yours truly,

(Signed) EDWARD OLIVER.

(B.)

NEW YORK, 28th November, 1851.

D. R. McKAY, Boston:

MY DEAR SIR: I am duly favored with yours of the 26th inst. Contents duly noted; also telegraph of this day's date; and I have advised you by same conveyance to insure in Coasters' Mutual Company. I also transmit you the following order to insure:

On ship Liscard,	$8,000	valued at	$16,000
On freight money,	$4,000	"	$7,200
On ship Wakefield,	$2,000	valued at	$11,200
On freight money,	$2,000	"	$6,000
	$16,000 in all.		

The Liscard is a fine new ship, three years old; her destination is Liverpool, and she sailed from Quebec on the 18th inst. The Wakefield is also a fine ship, eight years old; her destination is Greenock, Scotland. She sailed on the 7th inst. I trust you will get these risks done on moderate terms, but you are *not limited to a rate.* Do the best you can and lose no time.

You will please take out special policiesf or these risks, and enclose them to me, paying *cash* for the premium and drawing on me at one day's sight for the amount. You should get a discount of 5 pr ct. on these premiums. I get it from the offices here, and I am told money is tight in Boston. In fact, you must do your very best to get that discount, as I allow it myself when rendering accounts. Now, as to the commission, all I charge is 1-4 pr. ct. upon amount insured, which has to be divided between your brother and myself; but we always calculate on a *handsome scrip dividend* for these policies, therefore we shall divide *commissions and scrip.* I am likely to do a very large business with you in this way next year (if we are both spared) amounting, perhaps, to $20,000 of premiums, so that the scrip should be a handsome thing for both of us. I am in hopes of seeing you next month on this subject. I have been thinking that if you saw any safe chance of extending your business with the lower ports, we might make some mutual arrangements for our mutual benefit. I write this hurriedly, and conclude.

Y'rs truly,

A. McLIMONT.

(C.)

BOSTON, Nov. 29, 1851.

The following communication has been received at this office by telegraph from New York, for D. R. McKay:

Insurance ordered yesterday should be ten thousand dollars on ship Liscard, five thousand dollars on freight, twenty-five hundred on ship Wakefield, twenty-five hundred freight. Alter this; also value of Liscard's to twenty thousand and Wakefield to fourteen thousand dollars.

A. McLIMONT.

December 29, 1852. Filed in the clerk's office and subpœna issued, returnable February rules, to wit, February 7, 1853.

I. O. BARNES,
Clerk.

[D.]

(Copy.)

No. 3228. *By the Commercial Mutual Marine Insurance Company.*

[In case of damage, by perils of the sea, to dry goods, cutlery or other hardware, the loss shall be ascertained by a separation and sale of the portion only of the contents of the packages so damaged and not otherwise, and the same practice shall obtain as to all other merchandise as far as practicable.]

[Warranted free from loss or damage arising from any cause, if there is grain on board stowed in bulk, except coastwise.]

THIS POLICY OF INSURANCE WITNESSETH,

That the Commercial Mutual Marine Insurance Company do by these presents, and according to and in pursuance of their act of incorporation and by-laws, and not otherwise, cause D. R. McKay, (a member of said company, pursuant to said act and by-laws,) on account of A. McLimont—loss payable to A. McLimont, esq., him or his order—to be insured, lost or not lost, fifteen thousand dollars on the ship Liscard, and her freight, as follows: $10,000 on the vessel, $5,000 on the freight, at and from Quebec, Canada, to Liverpool, England, whereof is master for this present voyage, or whoever else shall be master in the said vessel, or by whatsoever other name or names the said vessel or master thereof is or shall be named or called; beginning the adventure upon the said vessel and freight as aforesaid, and to continue during the voyage aforesaid, on the vessel until she shall be arrived and moored at anchor twenty-four hours in safety, and on the property until landed.

And it shall be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places if thereto obliged by stress of weather, or other unavoidable accidents, without prejudice to this insurance.

[Sum insured, $15,000. Ship valued at $20,000, premium included. Freight valued $7,200.]
[Premium, $825; policy, 1—$826.]
[Note —— months, paid.]

Touching the adventures and perils which the said Insurance Company are contented to bear and to take upon them in this voyage, and for which the funds only of this company are bound, they are of the seas, fire, enemies, pirates, assailing theives, restraints, and detainments, of all kings, princes, or people, of what nation or quality soever, barratry of the master (unless the insured be owner of the vessel) and of the mariners, and all other losses and misfortunes which have or shall come to the damage of the said vessel and freight, or any part thereof, to which insurers are liable by the rules and customs of insurance in Boston: provided, that the insurers shall not be liable for any partial loss on hemp and flax, unless the loss amount to twenty per cent. on the whole aggregate value of such articles; nor for any partial loss on sugar, flaxseed, bread, tobacco, and rice, unless the loss amount to seven per cent. on the whole aggregate value of such articles; nor of any partial loss on salt, grain, fish, fruit, hides, skins, or other goods that are esteemed perishable in their own nature, unless it amount to seven per cent. on the whole aggregate value of such articles, and happen by stranding; nor for any partial loss on other goods, or on the vessel, or freight, unless it amount to five per cent. exclusive in each case of all charges and expenses incurred for the purpose of ascertaining and proving the loss; but the owners of such goods shall recover on a general average. It is further agreed that the insurers shall not be liable for damage or injury to goods by dampness, change of flavor, or by being spotted, discolored, musty, or mouldy, unless the same be caused by actual contact of sea-water with the articles so damaged occasioned by sea perils. And that the company shall not be answerable for loss or damage, by wet or exposure to the elements, of goods insured as on deck. And in case of any loss or misfortune, it shall be lawful for the insured, his factors, servants, and assigns, to sue, labor, and travel for, in and about the defence, safeguard, and recovery of the said vessel and freight, or any part thereof, without prejudice to this insurance, to the charges whereof the said Insurance Company will contribute, in proportion as the sum insured is to the whole sum at risk. And so the President and Directors aforesaid, are contented, and do hereby bind the capital stock and other common property of the said Insurance Company, to the insured, his executors, administrators, and assigns, for the true performance of the premises, confessing themselves paid the consideration due unto them for this insurance, by the insured, at and after the rate of five and one-half per cent.

(With one per cent. additional if in the North Sea, from 1st

Oct. to 1st March, inclusive, and one per cent. additional for each passage to or from Chagres, or ports in Mexico and Texas, except Galveston.)

[In the adjustment of claims for repairs on the vessel, whether in the nature of a partial loss or of a general average, it is specially agreed that instead of deducting one-third for new of the article of copper or metal sheathing, there shall be deducted two and a half per cent. of the net cost of re-coppering, after deducting the value of the old copper and nails for each and every month the copper shall have been on the vessel when the accident occurred; and if the copper shall have been on forty months or more, the cost of re-coppering shall be wholly borne by the assured.]

And it is hereby agreed, that if the insured shall have made any other insurance upon the vessel and freight aforesaid, prior in date to this policy, then the said Insurance Company shall be answerable only for so much as the amount of such prior insurance may be deficient towards fully recovering the property at risk, whether for the whole voyage or from one port of lading or discharge to another; and the said Insurance Company shall return the premium, or a ratable part thereof, upon so much of the sum by them insured, or for such part of the voyage as they shall be exonerated from by such prior insurance, provided that no return premium shall be made for any passage whereon the risk has once commenced. And in case of any insurance upon the said vessel and freight, whether it be for the whole or part of the voyage, subsequent in date to this policy, the said Insurance Company shall nevertheless be answerable, and the funds only of this company, to the full extent of the sum by them herein insured, without right to claim contribution from such subsequent insurers; and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent insurance had been made. And in case of loss, such loss shall be paid in sixty days after proof and adjustment thereof, the amount of the premium note, if unpaid, and all sums due to the company from the insured, when such loss becomes due, being first deducted, and all sums coming due being first paid or secured to the satisfaction of the said President and Directors, they discounting interest for anticipating payment. It is also agreed, that in case of capture or detention, the insured shall not have the right to abandon therefor, until proof is exhibited of condemnation, or of the continuance of the detention, (by capture or other arrest,) for at least ninety days; and that the insured shall not abandon in consequence of the port of destination being blockaded, but the vessel shall, in such case, have liberty to proceed to another port not blockaded, and there end the voyage, or wait a reasonable time for the blockade of the original port of destination to be raised; and that the acts of the insured or insurers, in recovering, saving, and preserving the property insured in case of disaster, shall not be considered a waiver or acceptance of an abandonment.

[If there be any lime on board, fifty per cent. to be added to the premiums for the passage.]

[Partial loss on bar, bundle, rod, and sheet iron, iron wire, braziers' rods, iron hoops, tin plates, and steel is excepted.]

It is also agreed that the insurers shall not be answerable for any charge, damage, or loss which may arise in consequence of seizure, or detention, for or on account of illicit or prohibited trade, or trade in articles contraband of war; but the judgment of a foreign consular, or a colonial court, shall not be conclusive upon the parties as to the fact of there having been articles contraband of war on board, or as to the fact of an attempt to trade in violation of the laws of nations. It is also agreed that this policy shall be void in case of its being assigned, transferred, or pledged, without the previous consent in writing of the insurers. It is also agreed, that the insured shall not have the right to abandon the vessel for the amount of damage merely, unless the amount which the insurers would be liable to pay, under an adjustment of a partial loss, shall exceed half the amount insured; and in case of a total loss of the vessel with salvage, the amount allowed out of the salvage to the officers and crew, for wages earned, or services rendered previously to the loss, shall be considered as so much of the salvage applied to the use of the ship owners, even although the same should be allowed or paid under the name of salvage, and not as wages, and shall accordingly be deducted in adjusting the loss. It is further agreed, that if any despute shall arise relating to a loss on this policy, it shall be submitted to the judgment and deternation of arbitrators mutually chosen, whose award in writing shall be conclusive and binding on all parties. The company are not liable for wages or provisions, except in general average.

And it is further agreed, that the parties effecting insurance with this company shall not be liable for any loss sustained by said company, beyond the amount of their premiums, and the absolute and contingent funds of the company, pursuant to the by-laws thereof, shall alone be bound for the payment of any loss.

In witness whereof, the President of said Commercial Mutual Marine Insurance Company hath hereunto subscribed his name and caused the same to be countersigned by their Secretary, at their office in the city of Boston, this first day of December, in the year of our Lord one thousand eight hundred and fifty-one.

Signed, JOHN WILLIAMS,
President.

Signed, GEORGE A. HOUGHTON,
Secretary.

I hereby transfer my interest in the within policy to Jas. E. Oliver, esq., or order.

A. McLIMONT.

I hereby transfer my interest in the within policy to Edward Oliver, esq.

J. E. OLIVER.
EDWARD OLIVER.

And on the 7th day of March, A. D., 1853, the respondents filed their answer to the said bill, in the words following, to wit:

To the Judges of the Circuit Court of the United States for the District of Massachusetts.

The answer of the Commercial Mutual Marine Insurance Company to the bill of complaint of Edward Oliver:

This defendant, reserving all right of exception to said bill of complaint for answer to so much thereof as it is advised it is material and proper to make answer, saith:

That on or about the twenty-ninth day of November, in the year eighteen hundred and fifty-one, one David R. McKay applied at the office of this defendant in said Boston, for insurance on a certain vessel called the Liscard and her freight for the account of A. McLimont, and in pursuance of such application insurance was agreed to be made thereon, upon the terms and conditions set forth in a certain written policy of insurance, issued by this defendant, and bearing date the first day of December, in the said last-mentioned year, a true copy of which policy, except the endorsements thereon it is believed is annexed to said bill of complaint, but for greater certainty this defendant prays leave to refer to the original.

This defendant denies that at or before the time when such application was made, or when the agreement to insure was made, and when the said policy was issued, any communication was made to it or to its officers by the said David R. McKay or any other person, to the effect that the said McLimont was not the owner of said vessel, or that the said insurance was effected by him as agent, or for the account of any other person; but this defendant and its officers in receiving such application, making said agreement, and issuing said policy, acted under the full impression and belief that said McLimont was the owner of said vessel and of her freight, and that the said insurance was effected and intended to be for his sole account and benefit.

This defendant denies that when the said application and agreement were made, and said policy was issued, the letters mentioned in the said bill of complaint or any or either of them were exhibited to this defendant or to any of its officers, or were seen or read by them or any of them, or that the facts therein stated were disclosed to the defendant or any of its officers, or the existence of any such letters known or suspected until after the said vessel was as is alleged lost.

This defendant denies that when the said application and agreement were made and said policy issued it was known to it or to any of its officers that the said McLimont was an insurance broker by pursuit or occupation, or that any communication to that effect was made to it or them, or that there was any understanding to that effect; on the contrary, this defendant and its officers did believe, from the manner and form in which said application and agreement were made, that said McLimont was engaged in navigation, and was the owner of said vessel and her freight.

This defendant saith that in making the said policy it did intend to fulfil the agreement for insurance made with said David R. McKay, and that the policy does contain the whole of the agreement made with him and conforms thereto in letter and in spirit.

This defendant denies it to be true that the President thereof has at any time declared that at the time of making the said contract he knew that said McLimont was an agent or broker and not the owner of said vessel, or made any statement or declaration to that effect; or that when application was made to this defendant for payment of a loss claimed under the said policy it ever promised to pay the same within the period of sixty days, as is alleged in said bill of complaint.

This defendant saith that up to the time when a claim was made for payment upon said policy by reason of the alleged loss of said ship, this defendant and its officers had no knowledge, information, or belief, that any person other than said McLimont was an owner of or interested in the said vessel, or her freight, or the insurance thereon; that after such claim was made, it appeared on certain papers exhibited in part as proofs of said alleged loss that the said McLimont was not an owner of or interested therein; that the said vessel and freight or some parts thereof were insured elsewhere by previous policies, which fact was not disclosed to this defendant or its officers when the agreement for insurance was made; and further, that the statements made as to the alleged loss of said vessel were not satisfactory to show that this defendant was legally or equitably bound to pay the same if the said McLimont had been the owner thereof.

This defendant denies that there is any error or mistake in said policy, and insists that it does conform to the intentions of the parties between whom it was made; that the defendant was informed, if not in terms yet by the manner and form in which application was made and the language used and believed, that the said McLimont was the owner of the said vessel and freight; that the said policy was made with intent to cover his interest as such and not the interest of any other person, and was delivered to and accepted by said McKay as conforming to said application and agreement.

And to the interrogatories annexed to said bill of complaint, to which this defendant is required to make answer, it answers—

To the first. That it believes that the paper annexed to said bill purporting to be a copy of a policy made by this defendant is a true copy, but refers to the original for greater certainty.

To the second. That previous to the issuing of the said policy this defendant did agree to make such insurance for the account of said A. McLimont.

To the third. That no letters or communication of said McLimont to said McKay were read to, handed to, or delivered to this defendant, its President, or any other officer, by said McKay or any other person, before the making of said agreement and signing of the said policy.

To the fourth. That no such letters as are mentioned in this interrogatory, or any letter or letters of similar important or substance, were shown to or delivered to or read and examined by this defendant, its President, or any other officer, before the signing of the said policy.

To the fifth. That it was not known or understood or communicated to this defendant, its President, or other officer, at the times referred to or either of them, or previously, that said McLimont was an insurance broker by pursuit or occupation.

To the sixth. No such letters were exhibited to or read by this defendant, its President, or other officer, nor was any reference to such letters, or statement of the contents of any such, made by said McKay.

To the seventh. No such letters were mentioned or referred to and no request made that the said policy should be made in conformity therewith.

Whereupon this defendant respectfully prays to be hence dismissed and allowed its costs.

LORINGS, *Solicitors.*

GEORGE H. FOLGER, *President.*

[SEAL.]

JAMES S. SAVAGE, Jr., *Secretary.*

March 7, 1853. Filed in the Clerk's Office.

H. W. FULLER, *Clerk.*

And afterwards, to wit, April 4th, 1853, the following amendment to his bill was, by leave of Court, with the assent of the respondent, filed by the complainant, viz:

MASSACHUSETTS DISTRICT,
Circuit Court:

EDWARD OLIVER
vs.
COMMERCIAL MUTUAL MARINE INSURANCE COMPANY. } *In Equity.*

And now the plaintiff, by leave of the Court, here amends his bill, as follows:

1st. By inserting on the 10th page thereof, in the last line after the words "lost to your orator," the words following—"and your orator avers, that at the time of the making and subscribing said policy, and thence continually until and when said ship was lost as aforesaid, he was the sole owner of said ship, and the sole party interested in the freight aforesaid."

2d. By striking out on the 15th page, in the second, third, fourth, and fifth lines thereof, the following words: "such of the several interrogatories hereinafter mentioned, and set forth and numbered as by note hereunder written, they are required to answer, that is to say," and inserting the words, "all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they and every of them dintinctly interrogated thereto, and more especially that they may in manner aforesaid answer and set forth."

3d. By striking out on the 19th page, in the three last lines, "the defendant is required to answer of each of the interrogatories above."

And on the 2d day of May, 1853, the following replication was filed, viz:

Replication to answer.

CIRCUIT COURT,
Massachusetts District:

In Equity.

EDWARD OLIVER
vs.
COMMERCIAL MUTUAL MARINE INSURANCE COMPANY.

The replication of Edward Oliver, complainant, to the answer of the Commercial Mutual Marine Insurance Company, defendant, to the bill of complaint of the above complainant:

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, says, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable Court shall direct; and humbly prays as in and by his said bill he has already prayed.

By THAXTER & BARTLETT, JR.,
Plaintiff's Solicitors.

This cause was thence continued from term to term until this present term, when, to wit, October 25th, 1855, having been brought on to be heard on the bill of complaint filed therein, and upon the answer of the defendant thereunto, and upon the proofs exhibited by the respective parties, and the parties having been fully heard by their counsel, and it appearing that the words "for whom it may concern" were by accident and mistake omitted to be inserted in the policy of insurance set forth in the pleadings in this cause, after the words "on account of A. McLimont," and that the said policy of insurance should be reformed by the insertion of these words therein; and it further appearing that the defendants have waived their rights to an issue upon the question of their liability under said policy of insurance when so reformed, and that the parties hereto have thereupon agreed that the amount which the complainant is entitled to recover of the defendants upon said policy of insurance when so reformed, is the sum of sixteen thousand and five dollars: it is ordered and decreed by the Court, that the defendants do pay to the complainant the said sum of sixteen thousand and five dollars and the costs of this suit, taxed at four hundred and twenty-one dollars and eighty-nine cents. Whereupon, the said defendants claimed an appeal to the Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, and gave good and sufficient security to prosecute their appeal with effect, and to answer all damages and costs if they should fail to make good their appeal, which security was approved by the Court, and the said appeal allowed accordingly.

UNITED STATES OF AMERICA,
Mass. Dis't, ss:

I, Henry W. Fuller, clerk of the Circuit Court of the United States for the First Circuit, Massachusetts District, do hereby certify that the foregoing is a true copy of the record and of all proceedings in the cause of Edward Oliver, in equity, vs. the Commercial Mutual Marine Insurance Company in said Court.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said Court, at Boston, in said District, this sixteenth day of November, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the eightieth.

[SEAL.]

H. W. FULLER,
Clerk.

Agreement.

The parties agree that the commissions to take the testimony need not be printed with the evidence.

D. THAXTER,
For Complainant.
F. C. LORING,
For Defendant.

CIRCUIT COURT,
Massachusetts District, ss:

In Equity.

EDWARD OLIVER
vs.
COMMERCIAL MUTUAL MARINE INSURANCE COMPANY.

Depositions of H. Homer and D. R. McKay.

[Taken under commission in the usual form.]

Interrogatories to be exhibited to Henry Homer, of Boston, in said district, in behalf of the complainant.

1st. What is your name, age, residence and occupation, and whether or not during the spring of 1852 you had an office in the same room with David R. McKay, and what was your then business?

2d. Whether or not, at the request of said McKay, you looked over the correspondence in regard to insurance on the ship Liscard, and if so for what purpose and why, and what did you do with the same?

3d. Whether or not did you afterwards, and if so how soon afterwards, call at the office of the defendant and have any conversation with Mr. Williams, the President of said corporation, in relation to the insurance of the Liscard; if so, state fully all that you said and he said upon the subject; and was or not said Williams an acquaintance of yours?

4th. Whether or not was anything and what said about his knowing or not knowing that Mr. McLimont was or not an owner or agent or acting for others in effecting the insurance on the said Liscard.

5th. Whether or not was anything and what said as to said Williams supposing at the time said policy was written where the owner of the said Liscard resided; and if so, state fully what was said.

6th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

S. BARTLETT,
Counsel for complainant.

Additional interrogatories filed by the complainant to said witness.

1st. If you have answered the 16th, 17th, and 18th cross-interrogatories affirmatively, please state whether or not he said at the same time anything about who he understood at the time of effecting the insurance was the owner of the Liscard; whether McLimont or some one else; and whether or not he said at such time anything and what about his performing his duties in exhibiting his letters of instruction to the insurance office. Put *de bene esse*, to be used if 16, 17, & 18 cross-int. competent.

S. BARTLETT,
For Complainant.

Cross-interrogatories to Henry Homer.

The defendants object to all the direct interrogatories as being or inquiring of matters irrelevant and impertinent and otherwise objectionable, and not waiving such objection exhibit cross-interrogatories *de bene esse.*

1. Please to state on what day, in what month, you looked over any correspondence in regard to insurance on the Liscard; what letters, if any, you saw, and give their dates and say by whom and to whom they were written.

2. When requested to look thereat, did said McKay give any reason for making such request? If yea, please to state all that he said at the time, and say whether you have done so.

3. Did he request you to call on Mr. Williams about the same or in relation to the insurance on the Liscard? Did he give any reasons for making such request? If yea, what were they? Did he state any object or purpose he had in view in requesting you so to call? If yea, what was it?

4. Please to state all that he said in relation to your making such call, and say if you have stated all.

5. On what day and time of the day did you call on said Williams? Was any person or were any persons present and within hearing of your conversation? If yea, state his or their name or names.

6. How long did such conversation continue? Did you state your object and motive in calling? Did you say that you called at the request of said McKay?

7. Was not your object in calling to entrap him into making some

statement in relation to said insurance which might be of service to said McKay or some person interested therein? If not, what was your object?

8. Did not Mr. Williams say to you that he did not know McLimont; that he supposed him to be the owner when the insurance was made, and to reside in Canada, or anything to such effect?

9. Did he not say that the policy was made as said McKay requested, and according to the application made by him?

10. Did he not speak of an application for insurance as having been made by said McKay and as being on file in the office? If yea, state all that he said in relation to it.

11. Did he shew you any such application? If yea, please to state if you read it or know its contents; and if so, repeat them.

12. Did he speak of ever having seen any letters relating to the effecting of said insurance before the policy was issued? Did he not say that he had seen nothing but the application for insurance to that effect?

13. Did you make any memorandum of your conversation with said Williams? If yea, how soon after? Please to produce it as a part of your answer.

14. How soon after such conversation did you see said McKay and where? Did you then and there communicate him what Mr. Williams said just as you done now?

15. Did you communicate the result of your mission to any other person or persons? If yea, to whom?

16. Has not said McKay at any time said to you that the said insurance or policy was made in the manner and form he was directed to make it, or anything to that effect? (Objected to for substance.)

17. Did he not say to you at any time or in your presence that he had followed his instructions in having it so made? (Objected to for substance.)

18. Did he not at any time say to you or in your presence that he was not or ought not to be held liable for any alleged error or mistake in said policy, because he had conformed to his instructions, or anything to that effect?

C. G., F. C., & C. W. LORING,
Defendant's Solicitors.

CIRCUIT COURT,
Massachusetts District, ss:

EDWARD OLIVER
vs.
COMMERCIAL MUTUAL MARINE INSURANCE COMPANY. } *In Equity.*

Interrogatories to be exhibited to David R. McKay, of Boston, in said district, on behalf of the complainant:

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1st. Whether or not, in the month of November, 1851, you received from A. McLimont, of New York, any telegraphic despatch ordering insurance on the ship Liscard and her freight? If so, annex the same to your answer.

2d. Whether or not upon the receipt of such communication, if any, did you apply to the Commercial Mutual Marine Insurance Company to effect such insurance? If so, to what officer did you apply; and what, if any, was his reply? Was any insurance effected at that time?

3d. Whether or not did you subsequently and how soon receive from said McLimont the letter referred to in such telegraphic communication? If so, will you annex the same to your answer?

4th. Whether or not did you receive by mail, and if so, when, whether or not contemporaneously with the last-mentioned letter, another letter from McLimont touching said insurance? If so, will you produce and annex the same to your answer?

5th. Whether or not did you agree with the President of said company to effect insurance upon said ship and freight, and upon the rates of premium and valuations to be inserted in a policy to be written by said office, and was or not said policy subsequently made out and delivered to you, and the premium paid by you?

6th. If you shall have said in reply to the first interrogatories that you exhibited the telegraphic despatch therein named to the President of said office, as you state, whether or not at that time said President agreed to make such insurance, or whether the same was postponed, and why?

[Objected to.]

7th. Whether or not did you subsequently, and how soon after, exhibit either or both of the letters received by you and referred to in the foregoing interrogatories to said President; and was or not any agreement between you and the said President thereupon or subsequently made to have such insurance effected by said Insurance Company?

[Objected to.]

8th. How long after such agreement was made was the policy made out and handed to you?

9th. If you shall say you exhibited said letters of the 28th and 29th November, 1851, to said President, before the agreement to make said insurance, please state whether or not any discussion was had between you and him in relation to any discount upon said premiums for the payment thereof in cash; if so, state the same fully. [Objected to.]

10th. If you shall state that any such conversation was had, please state whether or not any reference was made therein by either party to any effect that the allowance of such discount would have upon the rights or interest of said McLimont; if so, state all that was said upon that subject, if anything?

[Objected to.]

11th. If you shall state that any discussion was had between you and said President, about any discount for payment of premium in cash, state whether or not you said anything and what to said President about McLimont's position in relation to said insurance?

[Objected to.]

12th. Whether or not in such conversation, if any, in relation to a discount for payment in cash of said premium, was any reference made to either and which of said letters of 28th and 29th of November, 1851, of said McLimont to you; if so, state fully what was said, and was said premium paid in cash, and was any discount allowed?

[Objected to.]

13th. If said letters of said McLimont to you ordered insurance upon any other vessel than the Liscard, please state whether or not you agreed with the said President for such insurance at the same time you agreed for the insurance on the Liscard?

[Objected to.]

14th. Whether or not at the time both said insurances were agreed to were said letters of the 28th and 29th November, 1851, of said McLimont, referred to by you or by said President?

[Objected to.]

15th. Was anything at that time and if so what said by either party as to the contents of said letters in relation to the respective ages of said vessels, their voyages, or any other, and what particulars affecting the rates of premium; and whether or not were either and which of said letters examined or referred to in relation to the same?

[Objected to.]

16th. In what manner were the facts in relation to the history of said ship Liscard, her age, voyage, and other particulars necessary to fix the premium obtained by the President of said office?

[Objected to.]

17th. Were said facts communicated by you orally to said President, or did you or not deliver or exhibit to him the said letters of the 28th and 29th November, 1851, containing the same? Will you state whether or not you are certain of the accuracy and correctness of your answer to this question?

[Objected to.]

18th. Was or not the said Insurance Company the only one you applied to to write said risk?

19th. If you shall have said that you exhibited all of said letters of the 28th and 29th November, 1851, to said President before the agreement to insure said ship Liscard was made with him, will you state whether or not, before you exhibited said letters, you had carefully perused the same, so that you could state their contents accurately and exactly, and state also how soon after you received said letters you exhibited the same to the President?

[Objected to.]

20th. If you shall say you exhibited said letters to the President, whether or not, when you first exhibited them, did you leave them with him or take them away with you?

[Objected to.]

21st. Whether or not at any time was a written minute in relation to the insurance of said ship and freight made by you; if so, whether before or after the terms had been agreed on; and for what purpose was the same made, and to whom did you hand it; whether or not to the Secretary of the office?

22d. Whether or not at the time you made said memorandum had you the said letters of the 28th and 29th November, 1851, in your possession, or were they in the possession of said office, and did you or not take them from the office, and whether before, at the time, or after you left said memorandum?

23d. Whether or not was that the only memorandum made by you in writing in relation to said insurance, and for what purpose was it made?

24th. Whether or not have you been in the habit of procuring insurance in the insurance offices in Boston; and do or not the Boston policies usually contain any clause and what to cover the interest of parties where the insurance is affected in the name of an agent, and is such clause usually a printed or a written clause?

[Objected to.]

25th. Was or not this known to you at the time said policy was written?

[Objected to.]

26th. Did you or not know at the time said insurance was effected whether said McLimont was the agent of others, or himself the owner or interested in said ship?

27th. Whether or not did you make said agreement with the President of said office alone or with any and what other officer of said corporation; and did you negotiate or confer or converse about said agreement with any other officer of said corporation; and if so, with whom?

28th. Will you state whether before the loss of said ship, and after said insurance was effected on said ship, and how soon after, if at all, you had any and what conversation with the President of said Insurance Company tending to show whether he did or did not know at the time said insurance was effected that said McLimont was an insurance broker?

[Objected to.]

29th. Was anything and what said in that conversation, if any such conversation was had, in relation to McLimont's business, or in relation to the character in which he effected insurance?

[Objected to.]

30th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the sub-

ject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

S. BARTLETT,
Counsel for Complainant.

Additional interrogatories by the complainant:

1. Whether or not are all your instructions in relation to procuring a policy of insurance upon the Liscard and her freight in writing and contained in the letters by you produced. If not, and you received any verbal instructions, state them.

[Objected to for substance.]

2. If you answer the 18th and 19th cross-interrogatories affirmatively, please explain what you mean by manner and form? Do you or not mean that you understood from said letters of instruction that Mr. McLimont was the owner of the Liscard, or any part of her, or that you acted in making said contract under that belief, or how otherwise.

[Objected to for substance.]

(*Put de bene esse*, if said 18 and 19 cross be competent.)

S. BARTLETT,
For Complainant.

A true copy.
Attest: H. W. EULLER,
Clerk.

Cross interrogatories to David R. McKay:

The defendant, reserving all right of objection to the direct interrogatories, exhibit the following cross interrogatories, *de bene esse.*

1. Please to state your age, place of residence, and occupation, and whether the effecting of insurance for others is a part of your regular business.

2. Had you not received all the letters inquired of in the direct interrogatories before you applied to the said Insurance Company to make insurance on the Liscard? Can you say certainly? If you answer in the negative, please to state particularly on what day, and time of day, each of the said three letters and despatches was received, and the day and time of day on which you applied for such insurance.

3. Did you not make a memorandum in writing of the sums wanted to be insured, describing the subjects to be insured, their value, and the person in whose name the insurance was to be effected, and did you not give such memorandum to the President or Secretary of said Insurance Company?

4. Was not the policy made out in conformity with such memorandum?

5. Have you such memorandum or a copy? If so, please produce it—otherwise state its contents accurately.

6. Were you not directed to have the policy made out in the name of A. McLimont, and did you not do so?

[Objected to, as the directions are in writing.]

7. If you have said that you exhibited said letters or despatches or any of them to any officer of said Insurance Company, please to state whether you speak on this subject with absolute certainty.

8. Please to state particularly on what day and at what hour of the day you exhibited each of said letters and to whom, and whether you are sure that such person read each one of them?

9. Do you mean to swear that the President or Secretary of said office did read said letters or despatches, or any one of them?

10. Did not the same contain all the information required to make out the policy? If so, and you shew them to any officer of the company, why did you also make a written memorandum relating thereto?

11. Did you not communicate orally to the President of said Insurance Company information as to the age, voyage, &c. of the said vessel to be insured?

12. Were you not in first applying for said insurance asked for information as to the age, voyage, &c., which you were not able to give? Did you not subsequently receive such information? Did you not then make a memorandum in writing of it, and take such memorandum to the office of the Insurance Company, and was not the policy made out in pursuance thereof.

13. Did you not shew the letter dated November 29th to the President or Secretary of the said Insurance Company? Are you willing to swear that you shew to them or to either of them the letters dated November 28th?

14. When did you take the policy from the office; and did you then object that it was not correct, or did you ask to have it altered?

15. Did you then know that said A. McLimont was not an owner of or had not some interest in the Liscard or her freight?

16. If, in answer to the 38 direct interrogatories, you have testified to any such information as is therein enquired of, please to state on what day and in what place it occurred; what persons were present—what introduced the subject or led to such conversations?

17. Are you sure that you have stated accurately what said Williams said during such conversation? Can you recollect distinctly at this time the words he used? Have you not stated your impressions of what he said, or inferences from what he said, rather than his words?

18. Have you not since payment of the sum claimed under said policy has been refused said that the same was made in a manner and form in which you were directed to make it, or anything to that effect?

[Objected to for substance.]

19th. Have you not said or intimated that you acted according to orders in making said insurance? or that it was made as you were directed to have it made?

[Objected to for substance.]

20th. How long did you retain the policy in your possession before sending it to New York? Did you not read it or any part of it?

C. G., F. C., & C. W. LORING,
Defendant's Counsel.

A true copy.

Attest, H. W. FULLER, *Clerk.*

I, Henry Homer, of Boston, having been first duly cautioned and sworn to testify the whole truth, do depose and say, in answer to the interrogatories annexed to the foregoing commission:

Ans. to inter. 1. My name is Henry Homer, age forty-five years, residence Boston, Mass., and am now agent and treasurer of the Malone Sand Stone Company. In the spring of 1852 I had an office in the same room with David R. McKay. I was then a merchant.

Ans. to inter. 2. Mr. McKay was about to leave for Nova Scotia. He had been asked by Messrs. Lee & Higginson for the correspondence in his hands respecting the insurance of the Liscard, and that he requested me to look the letters over and take them up to Lee and Higginson's, if I thought it was proper for him to send the papers to them. I looked them over and took them up to Lee & Higginson.

Ans. to inter. 3. On the same day, I think, that I took the papers to Lee & Higginson, at all events about that time, I went into the office of the defendant and saw Mr. Williams, the President, who was an acquaintance of mine. I asked him what the difficulty was about this insurance, referring to their refusal to pay the insurance on the Liscard. He replied that he had not made any trouble; that there was no trouble with them, some expression of that kind; that it was the office where he had got some re-insurance. He then spoke from a remark of mine that he must have understood this business, and replied, "I thought that the owner lived in Montreal, but we find that the vessel is owned in Scotland," or "that the owner is in Scotland." I had some other talk. I made the remark, I did not see how there could be any trouble, that McKay was right enough.

Ans. to inter. 4. I think I said to Mr. Williams, that these folks, referring to Messrs. McLimont & McKay, were mere agents for the owners, and that he must have known it as he had seen the correspondence, or some remark of that kind. I think that it was in reply to this that he made the remark that he thought the owner lived in Montreal, but had since found that he lived in Scotland.

Ans. to inter. 5. I have already answered this interrogatory as fully as I can. He said he thought that the owner lived in Montreal.

Ans. to inter. 6. Nothing more now occurs to me, except what I stated to Mr. McKay on his return, as the result of my review with Mr. Williams, which I am informed by the commissioner it will not be proper to state.

And in answer to the cross-interrogatories annexed to said commission, the said deponent further saith:

Ans. to 1st cross-int. I cannot give the day, I think it was in the month of April; it was a day or two after Mr. McKay left for Nova Scotia. There were several letters of McLimont to McKay; it seems to me there were some other documents, but I am not sure. I merely looked them over and took them up to Messrs. Lee & Higginson's office. I cannot give their dates.

Ans. to 2nd cross-int. He merely said to me that Lee & Higginson had requested him to hand them the correspondence respecting the insurance of the Liscard, and he wanted I should look them over, and if I thought it was proper to hand them into them to do so. He wished me to look at them to see if he had done right and gone right, and he told me at the same time that he took the letters requesting the insurance up to Williams, at the time the insurance was made, and that he, McKay, had gone according to his instructions. This is all that he stated to me, as I now recollect.

Ans. to 3d cross-int. I have no recollection of his requesting me to call on Mr. Williams. I called on Mr. Williams voluntarily, at or about the time I carried the papers to Messrs. Lee & Higginson, which was during McKay's absence. Mr. McKay never gave me any reasons for such a request, and never made such a request, as I now recollect.

Ans. to 4 cross-inter. I cannot answer this question any different from my last preceding answer.

Ans. to 5 cross-inter. I called upon him in the forenoon, the day I do not remember. I do not remember of any persons being present except the clerks at the desks. If they had been paying particular attention they might have heard the conversation. I do not know whether they did or not.

Ans. to 6 cross-inter. The conversation continued but a very few minutes. I did not state my object or motive, or that I called at the request of McKay.

Ans. to 7 cross-inter. That was not my object. All my object was at the time that I was somewhat interested for McKay, knowing that he felt anxious to *clare* himself of any blame. I went there to see Mr. Williams and to ask him about it, to see whether any blame attached to McKay. I had no other motive.

Ans. to 8 cross-inter. He did not tell me that he did not know McLimont—he did not tell me that he supposed he was the owner

when the insurance was made. He told me he had supposed the owner lived in Canada.

Ans. to 9 *cross-inter.* I should think that he might have said that.

Ans. to 10 *cross-inter.* I do not recollect of his mentioning it, but he might have done so. I do not mean to swear that he did not, but that I have no recollection of his doing so.

Ans. to 11 *cross-inter.* He did not show me any application that I recollect of; I did not read any, and do not know its contents.

Ans. to 12 *cross-inter.* I do not recollect of his saying anything of that kind.

Ans. to 13 *cross-inter.* I did not make any memorandum of said conversation.

Ans. to 14 *cross-inter.* It was about six weeks after, on his return from Nova Scotia, that I saw Mr. McKay at his office and mine, in Boston; I did communicate to him then, as I have now, my conversation with Mr. Williams, and more fully, because it was then fresher in my mind.

Ans. to 15 *cross-inter.* I did not communicate with any other person than Mr. McKay on the subject; I may have said something to Mr. Lee or Higginson, but am not sure.

Ans. to 16 *cross-inter.* He said that Mr. Williams had seen the letters; that the policy was made out according to the instructions in the letters; he never said that the policy or insurance was made in the manner and form he was directed to make it, or anything to that effect, beyond what is already stated in this answer. He said that Williams knew that McLemont was an agent, and that he had introduced McLemont to him as an insurance broker, previous to this insurance, and that they had conversation on the subject of discount on premiums as a commission.

Ans. to 17 *cross-inter.* I cannot answer this any differently from my last preceding answer.

Ans. to 18 *cross-inter.* I have heard McKay say that there could be no blame attached to him, as the letters were shown to Mr. Williams, and the insurance made from them.

This is all I recollect of ever having heard him say in reference to it.

Answer to direct examination resumed:

Ans. to 1 *addn. dir. int.* Always in speaking of it, he spoke of McLemont as merely a broker in effecting the insurance. He spoke of Mr. Oliver being the owner of the ship, but I cannot say that he ever said that he knew Mr. Oliver was the owner when he effected the insurance. He said that he did show his letters to Mr. Williams, and I think he told me that he left them with Mr. Williams for a time.

HENRY HOMER.

And now the said David R. McKay, having been first duly cau-

tioned and sworn, to testify the whole truth, deposes and says, in answer to the interrogatories annexed to the foregoing commisson, as follows: In

Ans. to int. 1. I did receive a telegraphic message regarding an insurance on the said ship and freight, which I produce, and the same is marked (A) by the commissioner.

Ans. to int. 2. When I received the telegraphic message, I called upon the President of said Insurance Company, at the office of said company, and showed him the message; but not having received the letter, there was nothing to act upon till we received the letter, and we concluded to leave it till the letter was received. His reply was that nothing could be done until the order in the letter was received. There was no insurance effected at that time.

Ans. to int. 3. The day following the receipt of the message, I received the letter referred to, dated November 28, 1851, which I produce the same, is marked (B) by the commissioner, and is annexed.

Ans. to int. 4. I did receive another letter at the same time with the one mentioned in my preceding answer, which I produce. It is marked (C) by the commissioner, and is annexed.

Ans. to int. 5. I answer yes, to all the clauses of this question.

Ans. to int. 6. It was postponed for the reason that we had not sufficient information as to the vessel to make any insurance. The telegraph merely referred to an order which had already been given, directing some alterations; and at this time the order itself had not reached me.

Ans. to int. 7. On the same day that I received the said letters, which was Nov. 30th, 1851, I showed both of said letters to the President. I called upon the President in the forenoon and showed him the letters; he, before taking the risk, wanted time to consider; I called again in the course of the day, when he agreed to take the risks; he offered to take the Liscard for less than the Wakefield; he did not want to take the Wakefield at all, but I refused to let him take one without the other, and he agreed to take both.

Ans. to int. 8. The policy was handed to me the next day. In the first place, both vessels were included in the same policy, but I had it altered, and a separate policy made for each vessel, and these two policies I received on the same day.

Ans. to int. 9. We had some discussion on the subject inquired of in this interrogatory. I wished them to allow five per cent. discount on the premiums, because it was called for in Mr. McLemont's letter, in which he ordered the insurance. At first the President wanted to allow only three per cent. discount, but finally agreed to give five per cent.

Ans. to int. 10. The reason that I gave for insisting upon the five per cent. discount was, that Mr. McLemont stated that he had to allow that to the party for whom he was acting in procuring the insurance.

Ans. to int. 11. What I said was that Mr. McLimont allowed this discount to the party for whom he was procuring the insurance, and therefore McLimont insisted upon this discount.

Ans. to int. 12. Reference was made to the said letter of Nov. 28, 1851; it was then before us, and upon that letter the whole transaction was based. I cannot answer more fully than I have already done as to what was said. Said premium was paid in cash, and a discount of five per cent. was allowed.

Ans. to int. 13. I agreed at the same time with said President for an insurance on the ship Wakefield, and received a policy thereon as already stated.

Ans. to int. 14. Both of said letters were before us, and were a matter of conversation between us. It was upon these letters that our bargain was made.

Ans. to int. 15. He, the President, objected to taking the Wakefield as being an older ship, and the letter of the 28th of November was referred to as showing the different ages of the vessels.

Ans. to int. 16. The facts inquired of were obtained by a reference to the said letter of Nov. 28th, 1851.

Ans. to int. 17. I exhibited to him, certainly, the letter of Nov. 28. I am not so certain as to the letter of Nov. 29th, as it was not an important letter, but merely a correction of the other; but I think I showed him the letter of Nov. 29th. I am positive that I exhibited to him the letter of Nov. 28, 1851.

Ans. to int. 18. It was.

Ans. to int. 19. I had read said letters before showing them to the said President, but whether so carefully as to have been able to have stated their contents accurately, I do not now remember. I exhibited the said letters to the President in the forenoon of the same day that I received them. I cannot say positively what hour I called upon him, except that it was in the course of the forenoon.

Ans. to int. 20. I cannot say positively that I did leave said letters with him.

Ans. to int. 21. I did give a minute, I think, to the Secretary, for the purpose of filling up the policies, after the terms of insurance had all been agreed upon between me and the President. It was not one of the usual forms of application, but a mere memorandum to enable them to fill up the policy with the names and amounts.

Ans. to int. 22. During the interview the said letters were before us. At its termination, after the terms had been agreed upon, I made said memorandum and gave it, I think, to the Secretary, and then left, taking the letters with me. This was at the second interview, in the afternoon.

Ans. to int. 23. That memorandum gave the names of the vessels, their valuations, and the amount insured. I afterwards gave a memorandum with McLimont's name on it, for the purpose

of filling up the policy. I think this was subsequently, on the same day.

Ans. to int. 24. I am somewhat, but I do the most of my business in the New England office, where my policies have been made out on account of whom it may concern. I think it has usually been a written clause. I do not know what the custom is in other offices.

Ans. to int. 25. I was not then familiar with the general custom of the Boston offices, but my policies had always been so written.

Ans. to int. 26. I knew from said McLimont's letter of Nov. 28th, 1851, that he was not the owner of the vessel, and was acting for others, but I did not know who the owner was at that time.

Ans. to int. 27. I made the bargain with the President. At the first interview, Mr. Blanchard, one of the Directors, might have been present, but I am not certain. There was no one with whom I had conversation in the afternoon, when the bargain was made, except the President, so far as I can recollect.

Ans. to int. 28. Shortly after said insurance was effected, I think in the month of December, Mr. McLimont came on from New York. At his request I introduced him to the said President and immediately left. Before this, and I think before effecting said insurance—but I am not certain as to that—I made a proposition on behalf of Mr. McLimont to the said President to open a policy on goods from Europe, on board vessels to ports in the St. Lawrence. This is the only conversation that I recollect of.

Ans. to int. 29. I explained to them he did a large insurance business as an agent for parties in Canada, and wished to extend it to this city.

Ans. to int. 30. I recollect nothing more.

Ans. to 1st add. int. All the instructions I had are contained in the letters already referred to and produced.

Ans. to 1st cross int. I am thirty-two years old. I reside in Boston, and I am a commission merchant. The effecting of insurance for others is a part of my regular business. I don't do much at it.

Ans. to 2d cross int. As already stated, on receiving the telegraphic despatch, I called at the office and saw the President, and concluded we could not do anything till the letters were received. The letters were both received the next day, and I think at the same time, in the morning. In the course of the same forenoon I called again on the President, and he requested me to come back again, which I did as already stated, when the insurance was effected.

Ans. to 3d cross int. After the insurance was agreed for, I did give a memorandum as already stated in answer to the direct interrogatories. I cannot state more definitely in reference to said memorandum than I have already done.

Ans. to 4th cross int. I presume it was.

Ans. to 5th cross int. I have neither the original nor a copy, and I cannot state its contents more fully than I already have done.

Ans. to 6th cross int. I directed the policies to be made out according to the direction in his letter of November 29th, and supposed they were so made out.

Ans. to 7th cross int. I do speak with absolute certainty that the letter and despatch were exhibited to the President of the office.

Ans. to 8th cross-int. The despatch was exhibited to the President on the 29th of November, at what hour I cannot say. I think he read it if he did not, I read it to him, and he knew its contents. The two letters were exhibited to him on the day following in the course of the forenoon; I do not remember the precise hour; they were also present in the forenoon; I do not now recollect whether he read the letters, or I read them to him—he knew the contents of them.

Ans. to 9th cross-int. I cannot swear positively that the President did actually read the letters, one and all, but he did read some of them, or some portion of them, and was aware of their contents. I do not know that the secretary saw the letters at all.

Ans. to 10th cross-int. The President was the officer with whom the insurance was effected. The memorandum was given to the clerk or secretary to fill up the policy; that was the reason of my giving the memorandum. The letters gave all the information I had on the subject, and all upon which the agreement was based.

Ans. to 11th cross-int. No.

Ans. to 12th cross-int. When first I went to the office on the receipt of the telegraphic despatch, I was not able to give any information in reference to the vessel until the letters were received; for that reason the interview was deferred, as already stated. Upon the receipt of the letters I had the interview, and gave the information from the letters; and the memorandum I gave for the purpose of writing out the policy, as already stated. This was the only memorandum I made. I examined the policies merely as to the amounts insured and the nature of the risk, and they were correct according to the memorandum. I did not examine the policy in other respects, and do not know whether it was correct or not.

Ans. to 13th cross-int. I am willing to swear that I exhibited both of said letters to the President. I did not show either to the secretary, and had no conversation with him as I now recollect.

Ans. to 14th cross-int. I got the policy on the first of December. At first, one policy included both risks, to which I objected; returned the policy; a separate policy was then issued for each vessel. I made no other objection.

Ans. to 15th cross-int. I did not know who the owner or the parties interested were, but I was satisfied from McLemont, that he was not, and was merely acting as agent in procuring the insurance.

Ans. to 16*th cross-int.* I cannot answer this question more fully, or stated anything further than what is contained in my answer to the 28th direct interrogatory.

Ans. to 17*th cross-int.* I have not stated what Mr. Williams said in reply to my application for Mr. McLemont, and do not recollect anything further as to what was said, except that the offer was declined at that time.

Ans. to 18*th cross-int.* All that I have ever said on the subject was, that there was no blame to be laid to me; and if there was any fault, it was on the part of the company who were possessed of all the information I had on the subject. I have no recollection of having made the statement inquired of, or anything to that effect, otherwise than as above.

Ans. to 19*th cross-int.* I cannot answer this question any further or differently from my answer to the preceding interrogatory. I have no recollection of ever having said anything further than is therein set forth.

Ans. to 20*th cross-int.* I sent the policies to New York in an hour or two after receiving them. I read that portion of the policy which referred to the amounts and the nature of the risk, but did not notice the other parts, as I supposed the companies would fill them out correctly, they knowing as much about the ownership as I did.

Ans. to 2*d add. dir. int.* I knew that McLimont was not the owner of the Liscard, and supposed that he was acting for others in effecting the insurance, and that the policy would be made out accordingly, as the President knew all upon the subject that I did.

D. R. McKAY.

UNITED STATES OF AMERICA,
District of Massachusetts:

On the ninth and tenth days of December, A. D. one thousand eight hundred and fifty-three, by virtue of the annexed commission to me, I directed the said Henry Homer and David R. McKay, named in said commission, to appear respectively before me, at my office in the city of Boston, in said District; and each of said witnesses was by me first duly and carefully examined and cautioned, and sworn to testify the whole truth, and was thereupon carefully and apart from all other persons examined by me on the interrogatories annexed to this commission. And the testimony by him given was by me reduced to writing, and thereafter subscribed by the witness in my presence. And in taking said depositions all the directions in said commission contained were followed and complied with by me.

In witness whereof, I have hereunto set my hand, this tenth day of December, A. D. 1853.

ELIAS MERWIN,
U. S. Commissioner.

(A.)

BOSTON, *Nov.* 29, 1851.

The following communication has been received at this office by telegraph from New York:

For D. R. McKay:

Insurance ordered yesterday should be ten thousand dollars on ship Liscard, five thousand dollars on freight, twenty-five hundred on ship Wakefield, twenty-five hundred freight. Alter this; also value of Liscard to twenty thousand, and Wakefield to fourteen thousand dollars.

A. McLIMONT.

(B.)

NEW YORK, 28*th November*, 1851.

D. R. McKAY, Boston:

MY DEAR SIR: I am duly favored with yours of the 26th inst. Contents duly noted; also telegraph of this day's date; and I have advised you by same conveyance to insure in Coasters' Mutual Company. I also transmit you the following order to insure:

On ship Liscard,	$8,000	valued at	$16,000
On freight money,	$4,000	"	$7,200
On ship Wakefield,	$2,000	valued at	$11,200
On freight money,	$2,000	"	$6,000
	$16,000 in all.		

The Liscard is a fine new ship, three years old; her destination is Liverpool, and she sailed from Quebec on the 18th inst. The Wakefield is also a fine ship, eight years old; her destination is Greenock, Scotland. She sailed on the 17th inst. I trust you will get these risks done on moderate terms, but you are *not limited to a rate.* Do the best you can and lose no time.

You will please take out special policies for these risks and enclose them to me, paying *cash* for the premium, and drawing on me at one day's sight for the amount. You should get a discount of 5 p'r ct. on these premiums. I get it from the offices here, and I am told money is tight in Boston. In fact, you must do your very best to get that discount, as I allow it myself when rendering accounts. Now, as to the commission, all I charge is 1-4 p'r ct. upon amount insured, which has to be divided between your brother and myself; but we always calculate on a *handsome scrip dividend* for these policies, therefore we shall divide *commissions and scrip.* I am likely to do a very large business with you in this way next year, (if we are both spared,) amounting, perhaps, to $20,000 of premiums, so that the scrip should be a handsome thing for both of us. I am in hopes of seeing you next month on this subject. I have been thinking that if you saw any safe chance of extending your business

with the lower ports, we might make some mutual arrangements for our mutual benefit. I write this hurriedly and conclude.

Y'rs, truly,

A. McLIMONT.

(C.)

NEW YORK, 29*th November*, 1851.

D. R. McKay, Esq., Boston:

MY DEAR SIR: I wrote you yesterday, and am since without any of your favors. I find I have made a mistake regarding amounts to be insured upon ships Liscard and Wakefield, and telegraph you to-day regarding the same; it should be

$10,000 on "Liscard," ten thousand dollars.
$5,000 freight per Liscard, five thousand.
$2,500 Wakefield, twenty-five hundred.
$2,500 freight per Wakefield, twenty-five hundred.

Please have this altered; make out policies to *me or order*.

Truly yours,

A. McLIMONT.

U. S. CIRCUIT COURT,
Massachusetts District, ss.

In Equity.

EDWARD OLIVER
vs.
COMMERCIAL MUTUAL MARINE INSURANCE COMPANY.

Additional deposition of D. R. McKay.

[Taken under commission in the usual form.]

Additional interrogatories to be proposed by complainant to David R. McKay, of Boston, a witness examined in behalf of said complainant, in re-examination of said witness.

1. Have you been shown or seen since your testimony has been taken in this case, the written memoranda furnished by you to the insurance office referred to in such deposition? If so, in whose handwriting are they, and which if either of them is signed by you, and will you annex copies thereof to your answer hereto?

2. Whether or not was the memorandum dated the first of December, 1851, and signed by you, made before or after you had made the agreement with the President of said office and settled the terms of the contract for insurance, and for what purpose was said memorandum, dated December 1st, made?

3. Will you look at the memorandum not signed by you, and state whether this memorandum was made by you after or before the other one, why it was made, for what purpose and under what circumstances, and to whom you delivered the same?

4. Whether or not at the time both said memoranda were made, you had the letter of the 28th and 29th November, 1851, referred to in your former answers, in your possession, or were they in possession of said office, and did you or not take them from the office, and whether before, at the time, or after you made said last memorandum?

5. Do you wish to make any change in your statement since seeing these memoranda as to your knowledge at the time of effecting said insurance, that said McLimont was not the owner of said vessel, but was acting as the agent of others?

THAXTER & BARTLETT,
For Complainant.

[Objected to.]
Defendant declines to cross-examine.

F. C. LORING.

I, DAVID R. MCKAY, the witness named in the foregoing commission, having been first duly cautioned and sworn to testify the whole truth, do depose and say, in answer to the several interrogatories to said commission annexed, as follows, viz:

In answer to the first interrogatory:

Ans. to int. 1. I have seen the memoranda referred to since I gave my former deposition in this case. They were shown to me in Mr. Bartlett's office. They are in my handwriting. The one dated "Boston, 1st December, '51," is signed by me. I produce copies thereof—they are marked (A) and (B) by the commissioner, and are annexed to this deposition.

And in answer to the second direct interrogatory the said Deponent saith:

Ans. to int. 2. The memorandum was made after the agreement for the insurance had been made by me with the President. The agreement was made upon the letter from Mr. McLimont to me, and this memorandum was made by me merely to enable the clerk to fill up the policies.

And in answer to third direct interrogatory, the said deponent saith:

Ans. to int. 3. This memorandum was made after the one signed by me. The one signed by me was written, I think, in the company's office. I then left, taking with me the letters, but leaving that memorandum. Subsequently a clerk or messenger from the insurance office came to my office to procure the names of parties to be named in the policies; and thereupon I made the second memorandum, (the copy of which marked (B) is annexed,) I de-

livered this memorandum to the person who came for it. I do not know the person, but he professed to come from the insurance office. I made out this memorandum for the purpose of furnishing the insurance office with the names of the parties to be mentioned in the policies. That was all that was intended by it.

And in answer to the fourth direct interrogatory the said deponent further saith:

Ans. to int. 4. Both said letters were in my possession at the time the second memorandum was made, as already stated in my answer to the previous interrogatory. The letters had been left by me previously with the President, and upon them the agreement for the insurance was made. According to my recollection, the first memorandum was made from the letters in the insurance office, and then the letters I carried away with me.

And in answer to the fifth direct interrogatory the said deponent saith:

Ans. to int. 5. I do not.

D. R. McKAY.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

On this tenth day of May, A. D. one thousand eight hundred and fifty-four, by virtue of the foregoing commission, I caused to appear before me, Elias Merwin, a commissioner duly appointed by the Circuit Court of the United States for the District of Massachusetts, at my office in the city of Boston, in said district, David R. McKay, the deponent named in the foregoing deposition; and the said deponent was by me carefully examined and cautioned and sworn, and thereupon the said deponent did give the foregoing deposition in answer to the several interrogatories to said commission annexed, and the same was reduced to writing by me, and was thereafter subscribed by the said witness in my presence; and the said deposition was taken in a place separate and apart from all other persons, no one being present save the said deponent and myself; and I do further certify, that in the taking of said deposition I did conform in all other particulars to the directions in said commission contained. In witness whereof, I have hereunto set my hand the day and year aforesaid.

ELIAS MERWIN,
U. S. Commissioner.

Witness' fees, 1 day, $1,50.
Comm'rs fees, $6,

[A]

(Copy.)

Insure as follows:

$10,000 on ship Liscard, valued at $20,000
5,000 on freight of do " " 7,200

Sailed from Quebec, Canada, for Liverpool, England, on the 18th November.

Also, $2,500 on ship Wakefield, valued at $14,000
2,500 on freight of do., " " 6,000

Sailed from Quebec, for Greenock, Scotland, on the 17th November.

D. R. McKAY.

Boston, Dec. 1st, '51.

[B]

(Copy.)

Policies for D. R. McKay, on Liscard and Wakefield, to be made out on account of A. McLimont, and payable to him or order.

CIRCUIT COURT, U. S.,
Massachusetts District, ss:

In Equity.

EDWARD OLIVER
vs.
COMMERCIAL MUTUAL MARINE INSURANCE COMPANY.

Deposition of J. C. Lee.

[Taken under commission in the usual form.]

Interrogatories to be exhibited to John C. Lee, of Salem, in said district, in behalf of the complainant.

1. Were you requested at any time by the agents of the owner to deliver to defendants the preliminary proof of loss of the Liscard, and demand payment of the loss. If so, please annex said request to your answers.

2. State whether or not you complied with said request, and how. State what you did, and if in writing, annex a copy thereof to your answer.

3. Whether or not, after exhibiting such proof and making said demand, you subsequently saw the President of said office, and conversed with him as to the defendants being satisfied or not satisfied with the evidence of the loss, and as to their willingness or unwillingness to pay the same at any time, and how soon. State what he said.

[Objected to for substance.]

4. If you shall have said that said President proposed to pay said loss in sixty days, please say whether you subsequently and

how soon conferred with said President as to paying the same before the expiration of said sixty days, and receiving a discount, and what reply did he make, and what reasons did he give, if any?

[Objected to for substance.]

5. Whether or not, at the expiration of said period of sixty days, and at what date did you call on said President to pay said loss, and was not the same paid? Was anything, and if so, what said about any and what opinion of counsel, and on what ground, if any, did said President refuse to pay, and had or not any such ground been suggested in your previous interview with the President of said Insurance Company?

[Objected to for form and substance.]

6. Have you any letters or written memoranda made at the time enabling you to state what was said or done by you and said President at all the interviews above referred to? If so, please annex the same, or copies, to your answer.

[Copies objected to, and also originals.]

7. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

S. BARTLETT,
Counsel for Complainant.

The defendants exhibit their cross-interrogatories relating to the matters and things inquired of in the direct interrogatories, to which objections are taken *de bene esse*, and without the intent to waive any objections thereto.

F. C. LORING,
of Counsel.

Cross-interrogatories to J. C. Lee.

1. Whether you were or are a member of the firm of Lee & Higgingon, or Lee, Higginson & Co; and, if yea, when did you become one?

2. Please to state what documents you exhibited as proof of the loss of the Liscard. Did you make or were you authorized to make an abandonment of said vessel and her freight? If yea, please to produce your authority for so doing, and a copy of the abandonment so made.

3. How long after exhibiting the proof did you see the President of said Insurance Company, as inquired of in the 3d direct interrogatory; on what day and hour, in what place, did you see him, and who were present at the time?

Did he then and in you presence examine and read the papers you presented? Did he ask to have them left for examination? Did he ask for the log-book?

before stated, but whether at the same interview or not I do not now remember, I proposed to the President to make a discount for prompt payment of the loss. He declined, stating as a reason that they had had many losses to pay, and it not was convenient to pay till the end of sixty days.

Ans. to int. 5. On the tenth of April, 1852, I called upon said President to pay said loss, which he declined to do, stating as the reason that McLimont, the person to whom the policy run, had no insurable interest, and handed me the written opinion, I think, of Messrs. C. G. & F. C. Loring, which was to the effect that the company were not liable for that reason, or if liable at all, not for the full amount claimed, because of some previous insurance. No such grounds for declining to pay the loss had ever been stated by the President to me before.

Ans. to int. 6. I have the original letter written by me to Messrs. Grinnell, Minturn & Co., of New York, on the tenth day of February, 1852, and a true copy of another letter written by me to the same parties on the thirteenth day of February, 1852, and the same are annexed to this disposition. The said letter is marked (E,) and the said copy is marked (F.)

Ans. to int. 7. I do not recollect of anything more.

And in answer to the cross-interrogatories annexed to said commission, the said deponent answers, and says as follows:

Ans. to 1st cross int. I am now a member of the firm of Lee, Higginson & Co., and have been ever since it was formed, which was April 1, 1853. Previous to that, I was a member of the firm of Lee & Higginson, which was formed May 1, 1848.

Ans. to 2d cross int. I exhibited the documents already set forth in my previous answers, and which are annexed to this deposition.

I did not make, and was not authorized to make, as I now remember, an abandonment of said vessel or her freight.

Ans. to 3d cross int. I saw the President on the same day that I made the claim, which was on February 10th, 1852; the hour of the day I cannot state—it was before dinner. I saw him at the office of the company. I do not remember that any one was present. I left the papers with him. Whether he made any examination of them in my presence I do not remember. I am confident that he did not ask for the log-book at that time.

Ans. to 4th cross int. I am sure that he did not make any such qualification as that he would pay if the proofs were satisfactory, or if all was right—nothing of that kind.

I am not sure that I have stated all that he then said, but I am sure that I have not stated more than what he said.

Ans. to 5th cross int. It was on the same day, the hour I do not remember, except that it was before dinner, at the office of the company. I do not remember any one else being present, unless perhaps the Secretary. I do not think he was in hearing.

Ans. to 6th cross int. I do not think that he stated that he had examined the papers; but upon my proposing to make a discount for a payment in advance, he declined, giving as a reason that the company had met with many losses and could not do it conveniently; and this was the only reason that he did give. This is the substance of what was said, the exact words I do remember.

Ans. to 7th cross int. I think the only reason given at that time was the one already stated, that it was not convenient on account of previous losses. He said nothing about wishing to be satisfied with the evidence. I do not think he said he had examined the papers, or made any observation in reference to them. I am positive that there was nothing said about the log-book.

Ans. to *to* 8th cross int. I called upon him for payment of the loss on the tenth of April, 1852, I am quite confident. It was at the office of the company. I do not remember that any one was present, nor the hour of the day, except that it was before dinner. He made no other objection to paying the loss, except the want of an insurable interest of McLimont, and the possibility of a prior insurance on the freight, which only went to the amount for which they were liable. I am quite sure that he made no other objection; and on the thirteenth of the same April, he addressed a note to Lee & Higginson, stating his objections to paying said loss, which is annexed to this deposition, and marked (G) by the commissioner.

Ans. to 9th cross int. I think he did.

Ans. to 10th cross int. I should say no. I don't think he ever asked that question.

Ans. to 11th cross int. I do not pretend in any instance to give the exact words he used, but the substance of the conversation.

Ans. to 12th cross int. I have testified to what I believe was the substance of the conversations.

Ans. to 13th cross int. I had it with me at some of the conversations. I think I had it with me when I first made the claim.

Ans. to 14th cross int. It was not then known to me, and I learned it for the first time when the company objected to pay the claim.

Ans. to 15th cross int. The letter marked (E) was written in Boston, at the office of Lee & Higginson, at the time it bears date, and is the original letter. It was mailed February 10th for New York, to the address of Messrs. Grinnell, Minturn & Co., and has not been in my possession since, according to my present recollection, until within the last week. The paper marked (F) is a copy of a letter written at the office of Lee & Higginson, at the time it bears date, to Messrs. Grinnell, Minturn & Co., which was sent to them. The original I have not seen since, that I know of. This copy is taken from the copy of said letter in our press letter book. I have used both said papers to refresh my recollection in giving this deposition. I do not know that any one was present when either of said letters was written.

JOHN C. LEE.

UNITED STATES OF AMERICA,
District of Massachusetts, ss.

On the eighteenth day of November, A. D. one thousand eight hundred and fifty-three, by virtue of the commission hereunto annexed and to me directed, I caused the said John C. Lee, the deponent named therein, to appear before me, at my office in the city of Boston, in said district; and having first carefully examined and cautioned and sworn the said deponent, I did examine him carefully on the interrogatories and cross-interrogatories annexed to this commission. And the testimony by him given was by me reduced to writing, and read to the said deponent and thereafter subscribed by him in my presence. And in propounding said interrogatories to the witness, and in all other particulars in the taking of said deposition, I conformed to the directions in said commission contained.

In witness whereof, I have hereunto set my hand the day and year aforesaid.

ELIAS MERWIN,
U. S. Commissioner.

[A.]

[E. M. U. S. C.]

NEW YORK, *February* 9, 1852.

Messrs. Lee & Higginson, Boston:

GENTLEMEN: We beg to enclose herein policy for $15,000 on ship Liscard, say $10,000 on ship, $5,000 on freight, insured with the Commercial Mutual Insurance Company of your city. The ship has been abandoned, and we beg that you will do the needful to recover the amount, for which purpose you have herewith copy of the protest, policy, and the master's letter to his owner, which may assist you in securing the amount. Please inform us of the solidity of this company, and others of your city, and if our friends are safe in making advances on policies of this description.

We are, very truly, yours,
GRINNELL, MINTURN & CO.

[B.]

(Copy.)

[E. M. U. S. C.]

ST. JOHN'S, NEWFOUNDLAND, *5th Dec.*, 1851.

Edward Oliver, Esq.

SIR: You will, I am certain, be as much surprised to hear from

me as I am sorry to write you, from such a place as this. I will now state to you as briefly and at the same time as fully as possible the cause of my being here. Upon the 24th November last, I discharged my pilot off the Brandy Pots, the winds at the same time blowing fresh from W. N. W. I had a fine run as far as lat. 45° 00 N. long, about 54° 00 W., when I experienced light airs from the east, the breeze increasing gradually, sail was shortened accordingly; on Saturday, 29th Nov., I had a heavy gale from S. E., which came on so sudden as to give little time for taking in sail; the mainsail was blown to pieces from the yard, the fore and main topsail the same. A sea struck the flying jibboom, another heavy sea broke on board, carrying away two boats, and knocked away the front of the house on deck, (the cabin,) the skylight was washed overboard, also part of my clothes, chart, books, &c., damaging a great part of the ship's stores; the long boat was washed from the chocks, and ring bolts drawn from the decks. The staunchions were all started, and ship making much water. On Sunday, the 30th Nov., although the pumps were kept continually going, the water gained upon us, and on Monday we found the hoodens aft started, and one of the butts by the fore chains opened out, the sea at the same time washing over all, the ship straining and laboring very much, pumps constantly going. On Tuesday, 2d December, at 6 a. m., the water had gained 3 feet upon us; the ship was then taking very heavy lurches and a great list; the water then gained upon us as much as fifteen feet; a schooner hove in sight, the crew came aft and informed me they could pump no longer, and were determined to leave the ship. I then called the officers aft and heard their opinion, which was, that it was impossible we could keep the ship; and as the season was so far advanced, I saw no chance of getting the ship to any port, and there being seventy-five lives at a risk, I determined to abandon her; so we were taken on board the schooner "Chedabucto," and landed at this place upon the 4th inst. I have got all the crew boarded at the expense of Government, the crew that remains with me and shipped at Liverpool; I have to pay off to-morrow, when they will all be shipped or sent home by Government. I noted my protest immediately after landing; all the other papers will be properly made out to-morrow, which I will forward home by next mail at the same time. I will bring a copy of them with me. I expect to be able to get a passage home next week. I am getting money advanced to pay the crew from Messrs. Godridge and Law, merchants at this place; the amount will be about £80, for which I will have to give a bill upon you, which I have no doubt will be duly honored. During the gale I had one man blown from the topsail yard, and he is now in hospital insensible; another man was severely hurt at the helm. The doctor of the ship gets his passage home the same as the others, as I put his name upon the articles; he is now badly off, having few clothes and less money. I lost part of my clothes, and chronome-

ter very much damaged. I hope Mr. McCappin insured for me according to promise, if not I will be a great loser.

I was not aware of any mails leaving here till about an hour ago. This goes by a schooner by way of Halifax, being the only mail they have here. There will be no other mail for two weeks to come, so that in all probability I will be home as soon as the papers which I will forward by her. I now have nothing more to state than that I have indeed been unfortunate and a great loser under all circumstances. I have acted as the ship was my own property; and as I did not know whether or not the ship was insured, I acted for the best of all concerned. I am so agitated with thinking of my misfortune that I can scarcely write you. Under these circumstances I hope you will excuse this hurried scrawl, and

Remain, sir, your most ob't servant,

(Signed) JOHN GUTHRIE.

[C.]

Protest of ship Liscard.

E. M. U. S. C.

NEWFOUNDLAND, St. John's, to wit:

By this public instrument of declaration for protest:

Be it known and made manifest unto all whom it doth, shall, or in anywise concern, that on the fourth day of December, in the year of our Lord one thousand eight hundred and fifty-one, before me, William James Ward, notary public, by lawful authority appointed, and duly admitted and sworn, for the Island of Newfoundland, personally came and appeared John Guthrie, late master or commander of the barque or vessel called the "Liscard," of Liverpool, in the county of Lancaster, in that part of the United Kingdom of Great Britain and Ireland called England; which vessel is of the burthen of seven hundred and sixteen tons and seventy-six one-hundred parts of a ton, as appears by her register, number three hundred and twelve, dated at Liverpool, the thirty-first day of December, in the year one thousand eight hundred and forty-nine, whereof Edward Oliver, of Liverpool aforesaid, is the owner; and then duly noted his *protest:*

And on this sixth day of December, again before me, the said notary, personally came and appeared the said John Guthrie, master, together with Thomas Lindsay, mate, William Webb, second mate, and John Aberdeen, carpenter; all late of and belonging to the said barque "Liscard," who being carefully examined and solemnly sworn by me, the said notary, make this their *declaration* for protest, in the manner and form following, that is to say:

That they, these appearers, together with the rest of the crew of the said barque "Liscard," sailed in and with the said vessel from the port of Quebec, in the province of Canada, in British North

America, on Wednesday, the nineteenth day of November last past, being then laden with a cargo of timber, and bound for the port of Liverpool aforesaid:

That the said barque "Liscard," at the time she so sailed from the port of Quebec aforesaid, was tight, staunch, and strong, and well and sufficiently manned, provided, found, and equipped, in all things needful, fitting, and necessary for the said voyage; her cargo properly, carefully, and securely stowed, the hatches tight, and the said vessel in every respect sea-worthy:

That nothing material happened or occurred to the said vessel, from the time of leaving Quebec as aforesaid, until and up to Saturday, the twenty-ninth of November, when, at 6 a. m., the wind began to blow with violence, accompanied with snow; stowed the main-top-gallant sail, and double-reefed the topsails, and set the main-sail; at 8, took two reefs in the mizzen and set it; at 8. 30, a sea broke into the fore-topmast-staysail and carried it away; at 9, the fury of the gale having greatly increased, split the fore-topsail and mainsail while clewing them up to stow; at 10, stowed the foresail; 11, a. m., the gale still raging furiously, carried away the main-topsail while clewing it up to stow; one man knocked down at the wheel and much hurt; 11. 30, the gale blowing a perfect huricane, a heavy sea running high at the time, in which the ship labored greatly, hove her to, with some canvas in the mizzen rigging, and tarpaulin the canvass in the main rigging, with her head to the south-eastward; noon, the gale still raging and the sea running tremendously high, the vessel laboring very much:

That on Sunday, the thirtieth of November, the gale continued with unabated violence, accompanied with constant sleet; at 2. 30, p. m., heavy sea running fearfully high at the time, a sea broke on board the vessel, carrying away bulwarks; split the pinnace and gig to pieces, and washed them overboard, damaging the fore part of the poop, filling the cabin with water, washed the skylight overboard, broke the stove, chairs, barometer, and cabin lamp, damaged a great part of the ship's stores and the captain's and officers' clothes, the nautical instruments, charts, and books, washing overboard some of the ship's papers, official log-book, and other articles; at 3, the gale still furiously raging, and the vessel laboring heavily and suffering greatly, a sea struck the flying jib-boom, breaking it close off by the jib-boom and splintering the jib-boom; so that they were compelled to cut away the guys to prevent the wreck from damaging the ship; at 4. 30, p. m., a sea struck the jib-boom, carrying away in pieces the jib, which was well secured with gaskets to the boom; at midnight, the top-gallant-sail was blown away from the yard; at 9, a. m., sent four men to cut away the pieces of the foretop-sail from the yard, the mast and yard being greatly endangered by the pieces blowing round them; the gale continuing to rage with undiminished fury, one man was blown over the yard and fell on deck to all appearance dead; he revived a little but still re-

mained insensible; noon, the gale still violently raging, and a tremendously high sea running at the same time, the vessel laboring greatly and straining very much, and making considerable water, though the pumps all the while had been carefully attended to:

That on Monday, the first of December, the gale still fiercely raging, with a heavy sea running high at the time, the vessel laboring greatly and straining very much, and shipping in quick succession several heavy seas:

At 6, p. m., a heavy sea broke over her, washing the long-boat out of the chocks, drawing the bolts out of the decks to which the boats were fastened, carrying away the gripes, and broke the top-gallant-mast that the water casks were fast to, and started the staunchions to the leeward, also carrying away all the coals overboard; at midnight, weather still the same; at 8, a. m., swiftered in the main rigging—the pumps all the time strictly attended to:

At noon the weather somewhat moderated, but a heavy sea still continued to run very high, sounded the pumps and found five feet water in the hold, much water going down by the staunchions that were greatly strained:

That on Tuesday, the second of December, the gale somewhat abated, but a heavy sea still running high; at 8, sent the remains of the topsails on deck and bent another main-top-sail and flying-jib for a topmast-stay-sail and stowed them; found the water gaining fast, though the pumps were kept constantly at work; the carpenter employed filling round the staunchions with oakum:

At 6, p. m., set a two hours' watch, to keep the pumps steadily at work:

Midnight, the weather still the same; at 7 a. m., sounded the pumps and found fifteen feet of water in the well; 7. 30, a sail hove in sight, which proved to be the "Chedabucto," of Saint John's, Newfoundland; the crew of the said barque "Liscard" came aft to the captain, and said it was not safe to go on with the ship then making so much water and in such a disabled and crippled state; and after a consultation with the officers, all being of the same opinion with the crew, the captain concluded, as no effort of theirs could save the ship, it became absolutely necessary, to save their lives, that all on board should leave the vessel; they therefore got out one of the two remaining boats and went on board the said schooner "Chedabucto," for self-preservation, then and there abandoning said barque "Liscard," she being in an unsafe and unseaworthy condition, and they were brought in the said schooner "Chedabucto," to the port of Saint Johns, in the Island of Newfoundland aforesaid, where they arrived on Thursday, the fourth of December aforesaid.

And these appearers do further declare and say, that on and during the said voyage, and throughout the whole of it, every exertion was made by them, and by the rest of the crew of the said barque "Liscard," for the preservation of the said vessel, her ap-

purtenances and cargo, and every part and portion of them and each of them, from all and every damage, injury, and loss to them, or either or any part of them, and to bring the said vessel, as early as possible, in all safety, to her said port of destination:

And these appearers do further declare and say, that all damage, loss, and injury which have happened or been sustained, or which may happen or be sustained, to or by the said barque "Liscard," her appurtenances or cargo, or any part or portion thereof, on, or during, or in consequence of the said voyage, or of anything that occurred during the same, ought to be borne and suffered by the underwriters and insurers thereon, or whomsoever it doth, shall, or in anywise may concern, the same having been occasioned by the causes aforestated herein, and not by reason of, neither being in any degree attributable to, or in any way arising from, any want of exertion or skill in seamanship in these appearers, or the rest of the crew of the said vessel or any or either of them; nor at all owing to or caused by any defect, inefficiency, or insufficiency of the said vessel, her tackle, sails, or appurtenances, or any portion thereof, at the commencement of the said voyage, or during the same; nor to any neglect or want of proper care in the stowing or securing of the said cargo, or any part or portion thereof; but that all such damage, loss, and injury which have happened or been sustained, or which may happen or be sustained, to or by the said barque "Liscard," her appurtenances or cargo, or any part or portion thereof, as aforesaid, during the said voyage, or in consequence of anything that may have happened thereon, were and are solely owing to the causes already set forth herein, and to them only ought to be attributed.

Of all which matters and things the said master hath requested me, the said notary, to make a public act; whereupon, at such request, and on and in behalf of the said master, and all whom it may concern, I, the said notary, have protested, and do hereby solemnly and publicly protest, against all winds, waves, seas, swells, high and heavy, and cross seas, gusts, gales, storms, hurricanes, tempests, and all tempestuous, rough, and boisterous weather, as being the actual, true, and only cause of all damage, injury, and loss sustained by or to the said barque "Liscard," her tackle, appurtenances, or cargo, or any part or portion thereof, or of either of them, on or during or in consequence of the said voyage, or of anything that may have occurred thereon; as also against all parties, persons, and things whom or which it doth, shall, or in anywise may concern, for all loss, damage, expenses, expenditure, outlay, costs and charges, of what kind or character soever, which have in any way arisen, been incurred, or sustained; or which may arise, be incurred, or sustained from or by or in consequence of all or any of the causes or circumstances hereinbefore mentioned and fully set forth:

In testimony whereof, I, the said notary, have hereunto

set my hand and affixed my seal of office, at Saint John's aforesaid, this sixth day of December, in the year of our Lord one thousand eight hundred and fifty-one; the said [SEAL.] appearers making oath, that all and singular the circumstances aforestated, (the interlineation on the fourth page having been previously made,) were and are true, and thereto their names subscribing.

WILLIAM JAMES WARD,
Notary Public.

JOHN GUTHRIE, *Master.*
THOMAS LINDSAY, *Mate.*
WILLIAM WEBB, 2*d Mate.*
JOHN ABERDEEN, *Carpenter.*

[D.]

To the President of the Mutual Ins. Co., Boston:

DEAR SIR: We have been requested to claim the payment of the amount insured on the ship Liscard and her freight, the ship having been abandoned at sea, as will appear by the copy of protest now in your hands.

We claim for a total loss.

Will you be pleased to consider this as a formal claim for payment at the usual time from this date.

Yours, respectfully,
LEE & HIGGINSON.

Boston, Feb'y 10, 1852.

Duplicate: Handed the original in at the office on the 10th Feb'y, 1852, at 20 minutes before 1 o'clock.

GEORGE C. LEE.

[E.]

BOSTON, *Feb'y 10th*, 1852.

Messrs. Grinnell, Minturn & Co., New York.

GENTLEMEN: Your favor of the 9th inst. was received this morning, covering policy of insurance on ship Liscard—letter of the captain and copy of protest. We have made a claim upon the office for the amount insured, and left with them the copy of protest. We do not yet know what they will propose to do, but have been advised to make a handsome discount for cash. Please instruct us as to this point. This office is the least strong of any of our marine offices; but we are assured by one of the directors that there is no doubt of the loss being paid at maturity. We give you here a list of the offices which we consider of undoubted strength: American, Boston, Boylston Fire and Marine, Franklin, Hope, Mercantile

Marine, Merchants', National, Neptune, Manufacturers', Suffolk, United States, Washington—stock offices on the old principle; Alliance, Equitable Safety Marine and Fire, City Mutual, New England Mutual; the last four on the mutual principle.

Yours, truly,
LEE & HIGGINSON.

P. S. We have just seen the President, and he is satisfied with the evidence of loss, and proposes to pay in 60 days.

[F.]

(Copy.)

BOSTON, *February 13th*, 1852.

Messrs. Grinnell, Minturn & Co., New York.

GENTLEMEN: In reply to your favor of the 12th inst., received this morning, we have to say, that at the time of making the claim for loss on the "Liscard," we asked the underwriters if they would pay the claim if we would make them a discount for prompt payment. They declined to do so on the ground of their having had many losses to pay, and that it was not convenient to pay until the end of sixty days. We made some enquiries as to the condition of the office of a friend of ours in the direction, and he told us that although they had met with many losses, their condition was better than it had been, and that the loss would undoubtedly be paid at maturity. We learned also that they had reinsured—to the extent, we believe, of $10,000—so that they are not so badly affected as we feared. You will perceive, therefore, that nothing can be done but to wait, and we think there is not much risk in doing so.

Yours, truly,
(Signed) LEE & HIGGINSON.

[G.]

OFFICE OF COM'L M. M. ISN. CO.,
Boston, April 13th, 1852.

Messrs. Lee & Higginson, Boston.

GENTLEMEN: In reply to yours of this morning, I have only to say that I am not aware of any objections to the payment of the insurance on the bark Liscard and freight, except the apparent absence of any insurable interest in Mr. McLimont, for whose account the insurance was effected, and the existence of insurance on the freight elsewhere, which if prior in time would reduce the sum intended to be covered by our policy.

Yours, &c.,
JOHN WILLIAMS,
Pres't.

CIRCUIT COURT U. S.,
Massachusetts District, ss:

In Equity.

EDWARD OLIVER
vs.
COMMERCIAL MUTUAL MARINE INSURANCE COMPANY.

Deposition of A. McLimont.

[Taken under commission in the usual form.]

Interrogatories to be exhibited to A. McLimont, of the city and State of New York, in behalf of the complainants.

1. What is your name, age, residence, and occupation, and what was your occupation in the fall of eighteen hundred and fifty-one?

2. Whether or not, some time in the fall of eighteen hundred and fifty-one, you were applied to by any person and whom to procure insurance upon the ship "Liscard" and freight, and please look at the paper hereto annexed, and state whether or not it is a copy of such application?

3. If you shall say that any such application was made to you, state whether or not you made application to any person and whom to have said insurance effected in Boston and was it by correspondence or orally?

4. Whether or not, at the time such application was made by you, you yourself had any and what insurable interest in either said ship or freight.

5. At the time you made application to have said ship and freight insured in Boston, whose interest did you intend to insure—your own, or the parties whose interest you had been applied to to insure, if you shall have testified that any such application had been made to you?

[Objected to for form and substance.]

6. If you shall state that you applied to one David R. McKay, of Boston, to procure insurance upon said ship and freight, state whether or not after such application said McKay sent to you what purported to be a policy of insurance upon said ship and freight made by the Commercial Mutual Marine Insurance Company, the said defendants, and if yea, to whom if to any one did you transmit it?

7. Whether or not, while said policy remained in your hands and before you transmitted it to any one, you knew or understood that said policy purported to insure only such interest as yourself might have in said ship and freight, or that the interest of the owner of the ship for whom you acted was not protected thereby?

[Objected to for form and substance.]

8. Whether or not you paid said David R. McKay the amount of the premium on said insurance, and if yea, has the same been repaid to you by any person, and whom?

9. Whether or not after said policy on said ship and freight was sent to you, and how soon after, you proceeded to Boston and had any interview or interviews and conversations with the President of said Commercial Mutual Marine Insurance Company, and if so, for what purpose, and on what business?

10. State fully whether the nature of your own business was or was not and how spoken of in said interviews and conversations with said President? Whether or not said insurance on the "Liscard" and freight was or was not and how alluded to in said conversations?

11. Did said President or not state or intimate in any way and how any surprise in relation to your occupation, and did he or not, in any manner, and how intimate that the same was or was not known to him before?

12. Whether or not in the course of such conversations, if any, with said President, any and what reference was made as to where the owners of the ship "Liscard" and freight lived, or any reference in any and what way to future insurance to Montreal or Quebec account; if so, state fully all that was said?

13. Whether or not was the name of the owner of said "Liscard" and freight mentioned by you to said President, or by him to you, in the course of said conversations? If mentioned by you, did he say anything, and what in reply thereto, and was anything and what said by him in any way indicating a surprise or not as to such ownership, or that he was or not previously aware of the same? If so, state the same fully.

14. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

S. BARTLETT,
Counsel for Complainants.

The defendants object to the interrogatories numbered from 8 to 13, inclusive, as leading and also as inquiring of matters irrelevant and as impertinent.

F. C. LORING,
For Defendants.

Cross-interrogatories.

Paper annexed referred to in 2d interrogatory.

LIVERPOOL, *7th November*, 1851.

JAMES E. OLIVER, Esq., Quebec:

DEAR SIR: Please insure on best terms in New York £2,000 on

the ship "Liscard," valued £4,000, and £1,000 on freight, valued £1,800, at and from Quebec to port of discharge in United Kingdom, and advise me thereof per first mail, and send me the policy in due course.

You will please let the policy be in my name. You will please insure £500 on ship "Princess Royal," valued at £3,500, and £500 on freight, valued £2,000; also £500 on "Lanarkshire," valued £3,000, and £500 on freight, valued at £1,500; also £500 on ship "Wakefield," value £800, and £500 on freight, value £1,500. Please also say at what rate you can insure on ships "Tuskar," "Brandon," and "Princess Royal," from England to San Francisco, west coast South America and United Kingdom, with coals out, guano home.

Yours, truly,

(Signed) EDWARD OLIVER.

DEAR MCLIMONT:

See what you can do with the above. The "Liscard" is 3 years old, sailed 18th instant and bound for Liverpool. "Princess Royal" is an old vessel—about ten years; you must find out when she sailed. "Lanarkshire" sailed 1st November. Ship "Wakefield" cleared 17th November, is 8 or 9 years old. You must telegraph what you can do.

Yours, truly,

HENRY McKAY.

A true copy.
Attest: H. W. FULLER,
Clerk.

Cross-interrogatories to A. McLimont:

1. If, in answer to the 3d interrogatory, you shall have said that you made such application by correspondence, please to state with whom you corresponded on the subject, and how many letters you addressed to him, and how many you received from him?

2. Please to produce copies of all letters written to your correspondent, and all letters received from him relating to the effecting of said insurance on or before December 1st, 1851?

3. If you cannot furnish copies of your letters to him, please to state why, and give the dates and contents thereof as well as you can?

4. If you cannot furnish the letters received from your correspondent, state why, and give the contents and dates thereof?

5. Is it not your usual practice to keep copies of letters sent by you on business and files of letters received.

6. Are not the papers annexed, marked [A.] and [B.,] copies of letters written or despatched by you to your said correspondent? Did you write any other letter to him or send any other despatch

to him relating in any way to said insurance on or before said first day of December, A. D. 1851?

7. Why did you apply to any one to effect insurance in Boston, when the order was to insure in New York? State your reasons fully.

The defendants not waiving their objections to the interrogatories numbered 9 to 12, exhibit the following cross-interrogatories, *de bene esse:*

8. If, in answer to said interrogatories, you shall have said that you had any interviews with the President of said Insurance Company, please to state his name, whether you had any previous acquaintance with him, by whom you were introduced to him, at what place, at what hour, and who were present, and how long such interview continued?

9. Are you sure that the said President knew who you were or your name? How do you know this?

10. If you had more than one interview with him, answer the same inquiries in respect to each interview as are made in the seventh cross-interrogatory in reference to the first?

11. What *were* your object and purpose in seeking such interviews, if any?

12. Did you request to have any alterations made in said policy?

13. Are you sure that the name of Edward Oliver was mentioned at all?

14. If you are, please to state all that was said about him?

15. How long did you retain said policy in your possession? By whom was it sent to you from Boston, and on what day did you receive it?

F. C. LORING,
Of Counsel for Defendants.

[B.]

NEW YORK, 28*th November*, 1851.

D. R. MCKAY, Boston:

MY DEAR SIR: I am duly favored with yours of the 26th inst.; contents duly noted; also telegraph of this day's date, and I have advised you by same conveyance to insure in Coasters' Mutual Company. I also transmit to you the following order to insure:

On ship "Liscard"	$8,000,	valued at - -	$16,000
On freight money	$4,000,	" " - -	$7,200
On ship "Wakefield"	$2,000,	" " - -	$11,200
On freight money	$2,000,	" " - -	$6,000

$16,000 in all.

The "Liscard" is a fine new ship, 3 years old; her destination is Liverpool, and she sailed from Quebec on the 18th inst. The "Wakefield" is also a fine ship, 8 years old; her destination is

Greenock, Scotland. She sailed on the 17th inst. I trust you will get all these risks done on moderate terms, but you are *not limited to a rate.* Do the best you can and lose no time.

You will please take out special policies for these risks and enclose them to me, paying *cash* for the premium and drawing on me at one day's sight for the amount. You should get a discount of five per cent. on these premiums. I get it from the offices here, and I am told money is tight in Boston. In fact, you must do your very best to get that discount, as I allow it myself when rendering accounts. Now, as to the commission—all I charge is 1-4 per cent. upon amount insured, which has to be divided between your brother and myself, but we always calculate on a handsome scrip dividend for these policies; therefore we shall divide *commissions* and *scrip.* I am likely to do a very large business with you in this way next year, (if we are both spared,) amounting, perhaps, to $20,000 of premiums, so that the scrip should be a handsome thing for both of us. I am in hopes of seeing you next month on this subject. I have been thinking that if you saw any safe chance of extending your business with the lower ports, we might make some mutual arrangement for our mutual benefit. I write this hurriedly, and conclude.

Yours, truly,

A. McLIMONT.

[C.]

BOSTON, *November 29th,* 1851.

The following communication has been received at this office, by telegraph, from New York.

For D. R. McKAY:

Insurance ordered yesterday should be ten thousand dollars on ship "Liscard," five thousand dollars on freight; twenty-five hundred on ship "Wakefield," twenty-five hundred freight. Alter this; also, value of "Liscard" to twenty thousand, and "Wakefield" to fourteen thousand dollars.

A. McLIMONT.

A true copy.

Attest, H. W. FULLER, *Clerk.*

The execution of this commission appears in the schedules hereto annexed. Following the directions of the commission, and after appointing William D. Jones, a disinterested person, as a clerk, to assist me in reducing the deposition to writing, I took the following deposition.

CHAS. ELIOT SCOVILLE,
Commissioner.

Deposition of Andrew McLimont, produced, sworn, and examined the twenty eighth day of October, 1853, at No. 70 Wall street, New York city, in the office of the undersigned, commissioner by virtue of the annexed commission, issued out of the Circuit Court of the United States for the district of Massachusetts, in a certain cause now pending in said Court, wherein Edward Oliver is plaintiff in equity, and the Commercial Mutual Marine Insurance Company is defendant. Andrew McLimont, being duly sworn and examined for plaintiff pursuant to the directions in the commission, doth depose:

First. To the first interrogatory he says: My name is Andrew McLimont. I am 27 years of age. I reside in New Jersey. My place of business is in New York city. I am an insurance agent, and was so in fall of 1851.

Second. To the second interrogatory he says: I was so employed by James E. Oliver, of Quebec, at the time mentioned, and for the purpose mentioned. The papers annexed to the commission are a copy of such application.

Third. To the third interrogatory he says: I did make application to D. R. McKay to have said insurance effected in Boston. It was by correspondence.

Fourth. To the fourth interrogatory he says: I had not any.

Fifth. To the fifth interrogatory he says: I intended to insure the interest of Edward Oliver—not my own. Edward Oliver's was the interest I had been applied to to insure.

Sixth. To the sixth interrogatory he says: David R. McKay did send to me what purported to be such a policy of insurance upon said ship and freight made by the defendants. I transmitted it to Henry McKay, of Montreal.

Seventh. To the seventh interrogatory he says: I had no interest in the ship or freight, and while the policy remained in my hand, and before I transmitted it to any one, I neither knew nor understood that it purported to insure any interest of mine. I knew and understood it purported to insure the interest of the owner of the ship for whom I acted, and that his interest was protected thereby.

Eighth. To the eighth interrogatory he says: I paid David R. McKay the said premium, and it was repaid to me by James E. Oliver, of Quebec.

Ninth. To the ninth interrogatory he says: About four weeks after receiving said policy, I proceeded to Boston and had an interview, and only one, with the President of the defendants, for the purpose of effecting further insurances with the company in the spring of the following year. That was my business.

Tenth. To the tenth interrogatory he says: The nature of my business was fully spoken of in that interview with the President. I stated that I was an insurance agent, and that I received from ship owners and others, in Canada and Great Britain, such as Mr.

Oliver orders to insure. As I found the rates of insurance more moderate in Boston than in New York, I was desirous to open policies with his office.

Eleventh. To the eleventh interrogatory he says: Mr. Oliver had four policies from that office at the time, one of which was on the "Liscard" and her freight. These risks were alluded to at that conversation.

Twelfth. To the twelfth interrogatory he says: He did not intimate any such surprise in any way. He did not in any manner intimate that my occupation was not known to him before. There was no reference made as to where the owner of the ship lived at that conversation. Mr. Williams made this remark, that he would like a share of the summer business on the river St. Lawrence as well as the spring and fall. That was, insurance from Montreal and Quebec to and from Great Britain.

Thirteenth. To the thirteenth interrogatory he says: I mentioned Mr. Edward Oliver, of Liverpool, as the owner of the Liscard and freight, to the President at that conversation. He made no reply nor did he indicate any surprise as to such ownership, or that he was not previously aware of the same.

Fourteenth. To the fourteenth interrogatory he says: I do not remember anything else, except that Mr. Williams consented to transact that business.

The witness being cross-examined says as follow:

First. To the first cross-interrogatory he says: I corresponded with D. R. McKay. I wrote one letter to him, and received from him two.

Second. To the second cross-interrogatory he says: The papers marked [B.] and [C.] annexed to the cross-interrogatories are correct copies of the letter and despatch, which were the only communications with my correspondent, McKay. I have mislaid his reply by letter, which was the only one I received from him. A press copy can be obtained on application to him in Boston.

Third. To the third cross-interrogatory he says: I have already stated in my last answer, that annexed are copies of my letter and despatch.

Fourth. To the fourth cross-interrogatory he says: I cannot find the only letter received from Mr. McKay. The contents of the only letter I received from my correspondent, McKay, were that he had effected the insurances as ordered by me. The exact date I cannot recollect—it was two days after the date of my own letter. It also stated he had got a discount of five per cent. for cash on the premiums.

Fifth. To the fifth cross-interrogatory he says: Certainly.

Sixth. To the sixth cross-interrogatory he says: The papers annexed, marked [B.] and [C.,] are. I wrote no other letter, nor sent any other despatch to him.

Seventh. To the seventh cross-interrogatory he says: The risks were refused in New York by the offices with which I transact business, that is the reason.

Eighth. To the eighth cross-interrogatory he says: The name of the President is —— Williams. I do not know his Christian name. I had no previous acquaintance with him. I was introduced to him by D. R. McKay, at the office of the company, about eleven o'clock, a. m.; there was no one present at the interview. It lasted, I should say, three-quarters of an hour.

Ninth. To the ninth cross-interrogatory he says: I am perfectly sure. I know it because I was introduced to him by name, and he addressed me by name. I stated to him I was the agent who effected these policies on the Liscard and others.

Tenth. To the tenth cross-interrogatory he says: I had but one interview.

Eleventh. To the eleventh cross-interrogatory he says: My object was to open further policies with the company in the spring, on behalf of my friends in Canada and Great Britain.

Twelfth. To the twelfth cross-interrogatory he says: I made no such request.

Thirteenth. To the thirteenth cross-interrogatory he says: I am perfectly sure of it.

Fourteenth. To the fourteenth cross-interrogatory he says: I stated to him that the business I should bring the office would be the business of parties, like Mr. Edward Oliver and others, who were my friends. I stated this in connection with the policies of insurance already effected in the office for Mr. Oliver, of which I have already spoken.

Fifteenth. To the fifteenth cross-interrogatory he says: I received it at 9 o'clock in the morning, and sent it away at half-past 3 o'clock the same day. It was sent by D. R. McKay. I received it on the 2d day of December, 1851.

ANDREW McLIMONT.

Examination reduced to writing and read to, subscribed by and sworn to, by Andrew McLimont, the witness, on his examination before me, this 28th day of October, 1853.

CHAS. ELIOT SCOVILLE,
Commissioner.

WM. D. JONES,
Clerk.

CIRCUIT COURT U. S.,
Massachusetts District, ss:

In Equity.

EDWARD OLIVER
vs.
COMMERCIAL MUTUAL MARINE INSURANCE COMPANY.

[Taken under commission in the usual form.]

Interrogatories to be exhibited to Henry McKay, of Montreal, Canada, in behalf of the complainant.

1. What is your name, age, residence, and occupation?

2. State whether or not, some time in the fall of 1851, you were applied to by any person, and whom, to procure insurance upon the ship Liscard and freight?

3. If you shall state that such application was made to you by James E. Oliver, of Quebec, state in whose behalf he made such application, and whether or not he exhibited to you or furnished you with a copy of any letter from the person in whose behalf he was acting, and if yea, please look at the paper hereto annexed, and state whether or not that is a copy of such letter?

4. If you shall say any such application was made to you, state whether or not you applied to any person and whom in New York to procure such insurance, and was it by correspondence or orally?

5. If you shall state that you made such application to A. McLimont, of New York, whether after making such application he transmitted to you or through you what purported to be a policy of insurance, made by the Commercial Mutual Marine Insurance Company upon the said ship Liscard and freight, and to whom if to any one did you transmit it, and how soon after receiving it, and did you or not examine the same before you transmitted it?

6. State whether or not you were aware, before you transmitted said policy to James E. Oliver, if you shall testify that you did thus transmit it, that said policy covered only such interest as said McLimont might have in said ship and freight, and that it did not protect the interest of the party for whom you acted?

[Objected to (and) substance.]

7. Whether or not you paid to said McLimont the premium upon said policy and his commissions for procuring the same, and if yea, by whom if at all were you repaid, and if McLimont was not paid by you, did you procure the same to be paid to him by any person and whom?

8. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this

cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer?

S. BARTLETT,
Counsel for Complainant.

Defendants decline to cross-examine.

F. C. LORING,
of Counsel.

(Copy.)

LIVERPOOL, *November 7th*, 1851.

James E. Oliver, Esq., Quebec:

DEAR SIR: Please insure on best terms in New York £2000 on the ship "Liscard," valued at £4000, and £1000 on freight, valued at £1800, at and from Quebec to port of discharge in United Kingdom, and advise me thereof per first mail, and send me the policies in due course. You will please let the policies be in my name; you will please also insure £500 on ship Princess Royal, valued at £3500, and £500 on freight, valued at £2000; also, £500 on Lanarkshire, valued at £3000, £500 on freight, value £1500. Also £500 on ship "Wakefield," value £800, and £500 on freight, value £1500. Please also say at what rate you can insure on ships "Tuscar," "Brandon" and Princess Royal, from England to San Francisco, west coast South America and United Kingdom, with coals out, guano home.

Yours truly,
(Signed) EDWARD OLIVER.

Deposition of Henry McKay.

CIRCUIT COURT,
Massachusetts District:

In Equity.

EDWARD OLIVER, plaintiff,
vs.
COMMERCIAL MUTUAL MARINE INSURANCE COMPANY, defendant.

Deposition of a witness produced, sworn, and examined at Montreal, in the District of Montreal, and province of Canada, before the undersigned commissioner, in virtue of the commission issued out of the Circuit Court of the United States within and for the Massachusetts District, in the said cause, in the said Court depending, between the said plaintiff and the said defendant.

Henry McKay, of the city of Montreal, and province of Canada, ship and insurance broker, a witness produced, sworn, and examined on the part of the plaintiff—

To 1st int. ans. My name is Henry McKay. I am thirty-two years of age. I reside in the city of Montreal, and my occupation is that of a ship and insurance broker, and I am also agent to the board of underwriters of the city of New York.

To 2d int. ans. I was applied to by Mr. James E. Oliver, of Quebec, about the twenty-first day of November, eighteen hundred and fifty-one, to procure insurance upon the ship Liscard and freight.

To 3d int. ans. Mr. James E. Oliver made the application for such insurance on the ship Liscard and freight, on behalf of Edward Oliver, a merchant of Liverpool, in England; and at the time of making such application, said James E. Oliver exhibited to me a letter from said Edward Oliver, of which the paper now shown to me annexed to these interrogatories is a true copy.

To 4th int. ans. I applied for the said insurance on the ship Liscard and freight to Andrew McLimont, of New York, who acts with me as an insurance broker, by letter; which letter was dated the seventh day of November, eighteen hundred and fifty-one. In my said letter I gave a copy of the letter from Mr. Edward Oliver, referred to in my last answer.

To 5th int. ans. After the application to Andrew McLimont, mentioned in my last answer, he transmitted to me with some other policies a policy upon the said ship Liscard and freight, made by the Commercial Mutual Marine Insurance Company, of Boston. I received the said policy on the eleventh day of December, eighteen hundred and fifty-one, and on that day I transmitted it with other policies to James E. Oliver, of Quebec. I did not examine the policy particularly before transmitting it, as I presumed it to be correct from having come through said Andrew McLimont.

To 6th int. ans. I was not aware before I transmitted said policy to said James E. Oliver that it covered only such interest as said McLimont might have in said ship and freight, and that it did not protect the interest of the party for whom I acted. When I transmitted the said policy to Mr. James E. Oliver, I supposed that the said policy covered Mr. Edward Oliver's interest in said ship and freight, and not said McLimont's, as I knew that McLimont had no interest in either the ship or freight.

To 7th int. ans. I paid said McLimont the premium upon said policy and his commission for procuring the same, by giving him credit in an account which I kept with him. I drew upon said James E. Oliver for the amount of said premium of insurance and commission at the time I transmitted to him said policy, and my draft was subsequently paid by him. At the time I drew upon

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said James E. Oliver, I transmitted to him said McLimont's account for the said premium and commission.

To 8th int. ans. On the thirteenth day of December, eighteen hundred and fifty-one, I received a telegraphic message from said James E. Oliver, stating that the said policy on the Liscard and freight was incorrect in two particulars—that the risk should have been from the day of sailing, and not from the first of December, and that the loss should be payable to Edward Oliver; on receipt of which telegraphic message I wrote to David R. McKay, of Boston, who had effected the insurance for Mr. McLimont, giving him copy of said Oliver's telegraphic message, and requested him to call and notify the Commercial Mutual Marine Insurance Company of the irregularity, which I supposed he had done. At the same time, the thirteenth of December, I wrote by mail to James E. Oliver, requesting him to return to me the policy, and on reference to my letter-book I find I made use of the following: "I shall have them corrected and made out as effected by D. R. McKay, and payable to Edward Oliver." James E. Oliver did not return the policy, so I supposed he had sent it to England before my letter reached him. In conclusion I can only add, that the insurance was effected by Mr. McLimont and myself in good faith as brokers, by order of James E. Oliver, of Quebec, for account of Edward Oliver, of Liverpool.

And the foregoing answers being duly read to the witness, he persists therein, declaring that they contain the truth and hath signed. * * * * * One word obliterated is null.

HENRY McKAY.

Sworn and taken before me at Montreal, this tenth day of October, one thousand eight hundred and fifty-three.

HENRY BANCROFT,
Commissioner.

Deposition of James E. Oliver.

CIRCUIT COURT, U. S.,
Massachusetts District, ss:

In Equity.

EDWARD OLIVER
vs.
COMMERCIAL MUTUAL MARINE INSURANCE COMPANY.

[Taken under commission in the usual form.]

Interrogatories to be exhibited to James E. Oliver, of Quebec, Canada, in behalf of the complainants.

1. What is your name, age, residence, and occupation, and

whether or not you are in any way and how related to the complainant in the above-entitled action?

2. Whether or not, some time in the fall of 1851, you were applied to by the complainant, the said Edward Oliver, to procure insurance upon the ship Liscard and freight, and, if yea, please look at the paper hereto annexed, and state whether or not it is a copy of such application?

3. If you shall have testified that any such application was made to you, state whether or not you applied to any person, and whom, to procure such insurance to be made?

4. If you shall state that you applied to Henry McKay, of Montreal, to procure such insurance to be made, state how such application was made, whether orally or in writing, and whether or not you exhibited to him the letter of said Edward Oliver to you, or furnished him with a copy thereof?

5. Whether or not after such application to said McKay did he or any person, and whom, give or send to you a policy of insurance upon the ship Liscard and freight, purporting to be made by the Commercial Mutual Marine Insurance Company, the defendants; and, if yea, whether or not you transmitted the same to said Edward Oliver?

6. Whether or not you paid the premium and expenses upon said policy and for procuring the same, and, if yea, on whose account did you pay them, and have you been repaid by any one, and whom?

7. While said policy was in your hands, and before you transmitted it, and until the said Liscard was lost, whose interest did you understand to be insured and protected by said policy?

[Objected to for form and substance.]

8. Whether or not on or about the nineteenth day of November, eighteen hundred and fifty-one, the said Liscard sailed from Quebec on a voyage to Liverpool, and, if yea, state how you know the fact, and whether you had anything, and what, to do in regard to said ship and her freight while she was at Quebec, and whether or not she was engaged in freighting, and what was her freight list?

9. Whether or not, after the reported loss of said ship Liscard, you ever heard anything, and what, of her and of her cargo?

[Objected to for substance.]

10. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the *the* same fully and at large in your answer.

S. BARTLETT,
Counsel for Complainant.

Cross-interrogatories.

1. Were you not an owner of the Liscard, or of some part thereof?

Had you not some interest, direct or indirect, in said vessel, her cargo or freight, or in the voyage inquired of? If yea, please to state the nature and amount thereof.

2. Had you any interest whatsoever in the insurance on said vessel or freight?

3. Was not said vessel or her freight insured by other persons or corporations than the defendants? Have you not been so informed by the complainant? If yea, please to set forth all that you know or have heard from him about any such insurances, and to specify the amounts thereof, the times when made, and produce the policies, or copies thereof.

4. Was not any person besides the said Edward Oliver interested in the said vessel and freight? Have you not been so informed by him? If yea, state the names of such person or persons, and the nature and amount of his or their interest.

F. C. LORING,
for Defendants.

(Paper annexed referred to in 2d interrogatory.)

LIVERPOOL, *7th November*, 1851.

James E. Oliver, Esq., Quebec:

DEAR SIR: Please insure on best terms in New York £2000 on the ship "Liscard," valued £4000, and £1000 on freight, valued at £1800, at and from Quebec to port of discharge in United Kingdom, and advise me thereof per first mail, and send me the policies in due course.

You will please let the policies be in my name. You will please also insure £500 on ship "Princess Royal," valued at £3500, and £500 on freight, valued £2000; also, £500 on "Lanarkshire," valued £3000, and £500 on freight, valued at £1500; also, £500 on ship "Wakefield," valued at £800, and £500 on freight, value £1500. Please also say at what rate you can insure on ships "Tusker," "Brandon," and "Princess Royal," from England to San Francisco, west coast So. America and United Kingdoms, with coals out, guano home.

Yours, truly,
EDWARD OLIVER.

IN THE CIRCUIT COURT.

In Equity.

EDWARD OLIVER, plaintiff,
vs.
COMMERCIAL MUTUAL MARINE INSURANCE COMPANY.

Tuesday, the twenty-fifth day of October, one thousand eight hundred and fifty-three.

At the execution of a commission for the examination of James E. Oliver in this cause, this paper was produced and shewn to James E. Oliver, merchant, a witness sworn and examined, and by him deposed unto at the time of his examination on the plaintiff's behalf, before me.

G. O. STUART,
Commissioner.

Deposition of James E. Oliver, of the city of Quebec, a witness produced, sworn, and examined on oath, on Tuesday, the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and fifty-three, at the office of George Okill Stuart, esquire, in the city of Quebec, in her Britannic Majesty's province of Canada, by me, the said George Okill Stuart, by virtue of a commission issuing out of the Circuit Court of the United States, within and for the Massachusetts district, to me, the said George Okill Stuart, directed. I, the said George Okill Stuart, not being of counsel for the complainant, nor having an interest in the suit in the said commission mentioned, for the examination of the said James E. Oliver, a witness on behalf of the complainant, and to be used in a certain cause now pending in the said Court, wherein Edward Oliver is plaintiff, in equity, versus Commercial Mutual Marine Insurance Company, defendant, which said deposition was not taken in the presence of either party to the said cause, or their attorney or agent, but in a room separate from all other persons, no other persons being present during such examination than the deponent, myself, and a disinterested person appointed as a clerk to assist in reducing the said deposition to writing, the interrogatories and cross-interrogatories to the said commission annexed, having been put to the said James E. Oliver in their order, and his answers to each taken fully and clearly.

James Erskine Oliver, of the city of Quebec, merchant, aged forty years or thereabouts, a witness produced, sworn, and examined on the part and behalf of the complainant, Edward Oliver, deposeth and saith, as follows:

To the first interrogatory, the deponent saith:

"My name is James Erskine Oliver. I reside at the city of Quebec, in the province of Canada. I am a merchant, and I am brother of Edward Oliver, the complainant in the action entitled as stated in this interrogatory."

To the second interrogatory, the deponent saith:

In the fall of the year one thousand eight hundred and fifty-one, I was in the city of Montreal, in this province, to the best of my recollection about the twenty-first of November in that year; while there, my English letters were procured by me from the post office, and among them a letter from the complainant, of which the document referred to in this interrogatory, at this the time of my examination shewn to and read by me, is a true and correct copy.

To the third interrogatory, this deponent saith:

On the same day that I received the letter above referred to in the foregoing answer, I went over to the office of Henry McKay, in Montreal, an insurance broker, to whom I was recommended for the purpose of effecting the insurance required by the letter referred to in my last answer, and I requested him to effect the insurances therein mentioned on the best terms he could, which he undertook to do.

To the fourth interrogatory, this deponent saith:

I made the application to Henry McKay, stated in my last answer, by leaving the letter, of which the document referred to in my first answer is a copy, with him, to the best of my recollection on the morning I received it, and requested him orally to effect the insurances thereby required.

To the fifth interrogatory, this deponent saith:

After my application made to Henry McKay, as I have already stated, I received a policy of insurance upon the ship "Liscard" and freight, purporting to be made by the Commercial Mutual Marine Insurance Company, the defendants. This, to the best of my recollection, I received from the said Henry McKay, and I transmitted the same to the said Edward Oliver.

To the sixth interrogatory, this deponent saith:

I paid the premium and expenses upon the said policy, and for procuring the same; I paid them on account of the said Edward Oliver, and I have been repaid by him.

To the seventh interrogatory, this deponent saith:

While the said policy was in my hands, and before I transmitted it, and until the said Liscard was lost, I understood that the interest of the said Edward Oliver was insured and protected by the said policy.

To the eighth interrogatory, this deponent saith:

On or about the nineteenth of November, in the year one thousand eight hundred and fifty-one, the said Liscard sailed from Quebec on a voyage to Liverpool; I saw her leave the wharf and get into the stream, opposite the city of Quebec, on her departure. I was the agent for her at the port of Quebec; she was engaged in freighting, and her freight-list was wood, goods, or lumber.

To the ninth interrogatory this deponent saith:

I heard of the loss of the Liscard, and nothing more respecting her or her cargo.

To the tenth interrogatory this deponent saith:

I have nothing further to state beyond what I have already stated.

To the first cross-interrogatory this deponent saith:

I was not an owner of the Liscard or of any part thereof. I had no interest therein, direct or indirect, nor had I any in her cargo or freight, or in the voyage enquired of.

To the second cross-interrogatory this deponent saith:

I had not any interest whatsoever either in the insurance on the said vessel or freight.

To the third cross-interrogatory this deponent saith:

I have no knowledge of any persons or corporations, other than the defendants, having insured the said vessel or her freight. I have not been so informed by the complainant, and cannot therefore give any communications from him to that effect or produce any policies of the nature referred to in this interrogatory.

To the fourth cross-interrogatory this deponent saith:

No other person than the said Edward Oliver was, to my knowledge, interested in the said vessel and freight. I have never been informed by him that any other person was interested in the said vessel and freight, and cannot therefore state the name of any person or persons so interested, or the nature and amount of any interest therein in any other person.

J. E. OLIVER.

Sworn to at the city of Quebec this twenty-fifth day of October, one thousand eight hundred and fifty-three, before me, (one erasure in the caption, and another on the last page of this deposition first written over.)

G. O. STUART,
Commissioner.

CIRCUIT COURT,
Massachusetts District.

In Equity.

EDWARD OLIVER
vs.
COMMERCIAL MUTUAL MARINE INSURANCE COMPANY.

Deposition of Thomas Lindsay.

[Taken under commission in the usual.]

Interrogatories to be proposed to Thomas Lindsay, of Montreal, Canada, a witness to be examined on behalf of the complainant in the above-entitled action.

1st. What is your name, age, residence, and occupation; how long have you followed such occupation?

2nd. Whether or not about the nineteenth day of November, eighteen hundred and fifty-one, you sailed from Quebec in the Liscard; and if yea, in what capacity, and on what voyage?

3d. State the condition of said vessel at the time of sailing, whether she was tight, staunch, and strong, or how otherwise, and how she was manned, provided, and equipped, how her cargo was stored, and generally as to her seaworthiness, and capacity to perform the voyage.

4th. State what, if anything, occurred on said voyage, whether the voyage was successfully prosecuted; and if not, why not? State all that occurred on said voyage in detail.

5th. State whether said vessel encountered any gales or bad weather during the voyage; and if yea, and if you have not already testified in regard to it, state when it was, how severe the weather was, what effect it had upon the vessel, and in what condition she was in when you left her, if you shall have testified you left her?

6th. If you shall have testified that the officers and crew of said vessel left or abandoned her, state where it was, and why the vessel was thus left or abandoned?

7th. State whether not any and what consultation was had with the officers and crew as to leaving the ship, and what the result of that consultation was?

8th. By what vessel were the officers and crew of the Liscard taken from her, and where did you go, and whether or not since that time you have been to Liverpool?

9th. Whether or not since leaving the Liscard she has to your knowledge been heard from, and where?

10th. When did you last see the Liscard, and how long would it be possible for her to live in the condition in which you left her?

11th. Where is the log-book of said vessel, if you know?

12th. State who the other officers of the Liscard were, and where they now are, if you know?

13th. Whether or not the Liscard was loaded or had a cargo on board when she sailed on said voyage; and if yea, whether or not the same or any portion thereof reached the port of destination; and if not, why not, and what became of the same?

14th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

S. BARTLETT,
Counsel for Complainant.

CIRCUIT COURT,
Massachusetts District.

In Equity.

EDWARD OLIVER, plaintiff,
vs.
COMMERCIAL MUTUAL MARINE INSURANCE COMPANY, defendants.

Deposition of a witness produced, sworn, and examined at Montreal, in the district of Montreal and province of Canada, before the undersigned commissioner, in virtue of the commission issued out of the Circuit Court of the United States within and for the Massachusetts district, in the said cause, in the said Court depending, between the said plaintiff and the said defendant.

Thomas Lindsay, of North Shields, in that part of the United Kingdom of Great Britain and Ireland called England, at present in the city of Montreal and province of Canada, mariner, a witness produced, sworn and examined on the part of the plaintiff—

To the first interrogatory, answers: My name is Thomas Lindsay. I am about thirty-six years of age. I reside at North Shields, in England, but am at present in Montreal as the mate of the ship called the Prince Arthur, a merchant vessel. I am a mariner, and have followed the sea for upwards of twenty years. I have been going to sea as captain and mate for above sixteen years.

To the second interrogatory, answers: I sailed from Quebec in the Liscard about the nineteenth day of November, one thousand eight hundred and fifty-one, as chief mate of that vessel, bound for Liverpool.

To the third interrogatory, answers: The said vessel was at the time of sailing tight, staunch, and strong; she was well manned, there were plenty of seamen on board to navigate the vessel; she was provided and equipped fit for her voyage. Her cargo was well stowed under a proper stower at Quebec, and under my own eye. The vessel was perfectly seaworthy, and capable of performing her voyage.

To the fourth interrogatory, answers: Nothing occurred on the voyage worthy of remark until, I think, the thirtieth day of November, after we had been about eleven days on the voyage. Up to that time we had fine weather for the season; the ship was tight, and we had made good progress. On that day there came on a gale of wind, which almost increased to a hurricane. The principal part of our sails were carried away, only three sails being left to the yards. The gale struck us about six to eight o'clock in the

morning. I was on deck at the time and in charge of the ship. I called the captain who was below, but came on deck as soon as I called. He gave orders to reef the sails, which was done. The mainsail had blown away; the main topsail, the fore topsail, and topmast staysail.

The gale increased so heavy that we had to heave the ship to. The same afternoon a heavy sea struck the ship, washed two of the boats overboard, broke in the doors of the poop and did other damage. Another sea struck the ship during the night, broke the long boat and set the water casks adrift to leeward, which strained the stanchions, covering boards and water-ways, and did other damage. These seas caused the ship to leak very much. The next day, being I believe the first day of December, we had the same sort of weather. The ship continued to ship and make a great quantity of water, and could not be kept free with the pumps. The gale was about as severe a one as I ever encountered. The wind was from the northeast when the gale commenced, and veered round to west northwest, which caused a heavy cross sea. The day after this, that is on the second day of December, the weather was fine and we bent some sails. The captain and chief and second officers on that day held a consultation to determine what was best to be done, and it was agreed upon that it was best that the vessel should proceed to St. Johns, Newfoundland, to refit. We let her lie that night to have all hands to pump the ship, because the water was gaining upon us so fast. In the morning, that is the morning of the third of December, the carpenter sounded the pumps in my presence, and we found that the water had gained about fifteen feet. The captain gave orders to clear away and make sail to endeavor to get to St. John's. Whilst the crew were busy a vessel hove in sight which bore down to us. She proved to be the Chittabuctoo, a schooner belonging to St. John's, Newfoundland, bound to that place. The crew of our vessel told the captain that they had determined to leave the ship, as she was in a water-logged state, and might not be able to reach Newfoundland or any other place. They also said that owing to the lateness of the season it was doubtful whether they would meet with another vessel. The captain told them at first that he would not leave the ship, but finding the men were determined to leave, he was obliged to abandon the ship, and officers and crew went on board of the vessel we had spoken. I think that the measure of leaving the vessel was necessary for our safety. No one was left on board of the vessel, and I have heard nothing of her since.

To the fifth interrogatory, answers: I have already answered this interrogatory, by my answer to the last interrogatory.

To the sixth interrogatory, answers: The vessel was abandoned on the Banks of Newfoundland, somewhere about the Green Bank. I do not know the latitude or longitude. I have already stated why the vessel was abandoned. The crew had determined to leave, and my opinion was that they did right. I had determined in my own

mind before the Chittabuctoo hove in sight to leave the first chance I had, deeming it necessary to my safety, though I said nothing of this to the crew or captain.

To the seventh interrogatory, answers: There was no consultation by the officers and crew about leaving the ship. I have already stated that the crew determined to leave, and that the captain was forced to accede and go with them.

To the eighth interrogatory, answers: I have already stated the name of the schooner on which the officers and crew of the Liscard took refuge. We were taken to St. John's, Newfoundland. I have since then been twice to Liverpool.

To the ninth interrogatory, answers: I have already answered this interrogatory in my answer to the fourth interrogatory.

To the tenth interrogatory, answers: I have already said that I last saw her about the third of December, of the year one thousand eight hundred and fifty-one. I do not know how long she might have held together. It is impossible to say, as it would greatly depend upon the weather. It would not have been long before she entirely filled with water, probably not many hours.

To the eleventh interrogatory, answers: I do not know where the log-book of the Liscard is now; it was given to the captain by me at St. John's, Newfoundland, after our arrival there. I have not seen it since, but the captain told me that in a voyage he afterwards made from St. John's to Liverpool, his chest containing the log-book was washed overboard and lost.

To the twelfth interrogatory, answers: The captain's name was Guthrie. I think his name was John Guthrie. I was the first mate and William Webb was the second mate. I do not know where the captain and second mate now are. I think that the captain belonged to Liverpool, and the second mate to Birkenhead, near Liverpool.

To the thirteenth interrogatory, answers: The Liscard was loaded with a cargo of timber when she sailed on said voyage. I am not aware that any part of the cargo reached its destination. The ship, as I have stated, was abandoned waterlogged, and with her the cargo was also abandoned.

To the fourteenth interrogatory, answers: I have no further knowledge in the matter.

And the foregoing answers being duly read to the witness, he persists therein, declaring that they contain the truth and hath signed.

THOMAS LINDSAY.

Sworn and taken before me at Montreal, this seventh day of September, one thousand eight hundred and fifty-three.

HENRY BANCROFT,
Commissioner.

Agreement.

CIRCUIT COURT,
Massachusetts District.

In Equity.

EDWARD OLIVER
vs.
COMMERCIAL MUTUAL MARINE INSURANCE COMPANY.

It is agreed that Grinnell, Minturn & Co. were duly authorized to make the preliminary proof, demand payment, and institute a suit upon the policy referred to in this case, and that the endorsements in the policy are genuine.

This admission is made upon condition that the Amsterdam policies on the Liscard and freight or copies thereof, or affidavits satisfactory as to their dates, shall be produced before a decree is entered in this case for the plaintiff if any such result shall be attained.

F. C. LORING,
For Defendants.

Agreement.

OLIVER
vs.
COMMERCIAL MUTUAL MARINE INSURANCE COMPANY.

It is agreed that the plaintiff was the owner of the Liscard as set forth in his bill, for the purposes of this suit.

C. G., F. C., & C. W. LORING,
For Defendants.

CIRCUIT COURT U. S.,
Massachusetts District, ss:

In Equity.

EDWARD OLIVER
vs.
COMMERCIAL MUTUAL MARINE INSURANCE COMPANY.

Depositions of J. Williams and G. A. Houghton.

[Taken under commission in usual form.]

Interrogatories to be exhibited to John Williams and George A. Houghton, of Boston, in behalf of the defendants.

1st. Please to state your age, place of residence, and occupation,

and whether or not in the months of November and December, 1851, you held any and what office in said Insurance Company. And if you held any office, please to state generally the duties thereof.

2d. To what officer or officers of said company were applications for insurance there made, and by whom were they acted upon?

3d. What officers of said company were authorized to receive and act upon applications for insurance?

4th. Please to state the names of all the officers of said company at that time. If any of them were absent, or did not act as such, please name him or them.

5th. Whether not, during said months, or either of them, was application made to said company or any officer thereof to effect insurance on a vessel called Liscard and her freight? If yea, by whom was such application made, and to whom?

6th. Whether or not was such application, if any, made in writing? If yea, please to annex it. If you cannot state any, when and where did you last see such application? Has any search or inquiry been made for it? State all that you know about it.

7th. Please state the contents of such application as particularly as you can, giving the language thereof if possible.

8th. To whom was said application made? By whom was it received? And by whom was it acted upon? Give the names of all the officers of the company who had any knowledge thereof.

9th. Whether or not did said company make an agreement to insure said vessel and freight? If yea, by whom was such agreement made? Please to produce a copy of any such agreement, if in writing, and state whether or not it is the form of agreement or policy of insurance then used by said company?

10th. Whether or not was any agreement other than is expressed in such policy made by said company or any of its officers relating to insurance on said vessel and freight?

[Objected to as leading by plaintiff.]

11th. Whether or not does said policy contain the whole of the agreement (if any) made by said company for insurance on said vessel and freight?

[Objected to by plaintiff as leading.]

12th. Whether or not does such policy conform to the application made for insurance on said vessel and freight? If there is any variance, please to state what it is?

[Objected to as above and for substance.]

13th. At the times when said application was made and acted upon and policy made, who was known or supposed to be the owner of or interested in said vessel and freight for whose account said insurance was made? Please to state all the facts and reasons tending to show that such person was such owner or so interested.

[Objected to for substance.]

14th. Did you or not know or had you or not any and what

reasons for believing on whose account said insurance was effected? If yea, give the name of such person, and the grounds and reasons of such knowledge or belief.

15th. Whether or not did you know or believe, and to your knowledge or belief did any officer of said company know or believe, that the person named in said policy as the one on whose account it was effected was not the owner of or interested in said vessel or her freight?

16th. If it had been known or supposed by you that said McLimont was not interested in said vessel and freight, whether or not would said policy have been issued in the form in which it was?

[Objected to as leading and for substance.]

17th. When said insurance was made did you or not know what profession, business, or employment said McLimont was engaged in? If you had no such knowledge, had you or not any opinion or belief about the same matter? If yea, please to state it and the reasons thereof.

[The latter part beginning with the word "if you" objected to for substance.]

18th. Had you or not any personal knowledge or acquaintance with him?

19th. On the 29th day of November, 1851, or at any time previous to the issuing of said policy, whether or not was any letter written or signed by said McLimont and relating to said insurance shown to or seen by you?

20th. Whether or not have you at any time declared, that when said policy was made you knew that said McLimont was a broker and agent and not the owner of said vessel.

21st. Whether or not did said company, or did you personally or as an officer thereof, ever admit any liability for the alleged loss of said vessel and freight or say anything relating thereto? If yea, what did you say and to whom?

22d. Have you seen the letters annexed to said bill of complaint? If yea, please to state whether you ever saw the same or any of them before the said policy was issued.

23d. When said application for insurance was made and acted upon and said policy issued, did you or not know or believe that said McLimont named therein was the owner of or interested in said vessel and freight, and was the person on whose account said insurance was made?

[Objected for substance and form.]

24th. Is said company conducted on the stock or mutual plan? Please to state the difference and to whom the profits of the business, if any belong, and how they are appropriated, and whether or not parties making insurance share therein.

25th. On the said policy of insurance who would have been entitled to receive the dividends of profits or scrip, if any?

26th. If it had appeared on the face of said policy that said

McLimont was not the owner of said vessel, and not the person on whose account the insurance was effected, would he or not have been entitled to receive the dividend of scrip, or profits thereon, if any?

27th. Have you or not to your knowledge ever seen or conversed with said A. McLimont? If yea, when, where, what was the subject of conversation, who were present? Please to repeat all the conversation, if any, which you had with him as fully as possible.

28th. Whether Mr. George C. Lee at any time called upon you and requested payment of the amount of said policy. What papers, if any, did he exhibit as proof of loss? Whether or not did you examine the same at his first interview with you?

29th. Whether or not on examining said papers did you find the proofs satisfactory? If not, please to state in what respects they were otherwise.

30th. Whether or not did you ever communicate your opinion thereon to said Lee? If so, where? What did you say? Please to state fully.

[Objected to for substance.]

31st. Whether or not did you ever admit that a loss under said policy was justly due? If yea, when and to whom?

[Objected to for substance.]

32d. Did you or not ever entertain any such opinion?

[Objected to for substance.]

33d. Whether or not was it the practice of the defendants to consult counsel as to liability for losses when everything appeared fair and clear? In what kinds of cases were counsel consulted?

[Objected to for substance.]

34th. Whether or not did you ever offer to pay said policy if a discount of interest were made or anything to that effect.

35th. Whether or not were you ever requested to pay the same, discounting interest? If yea, what answer did you make?

36th. If in examining the proofs of loss and papers relating to said insurance, you have been satisfied that the same was justly due and that said Lee was authorized to make an abandonment and receive payment of the sums insured, should you or not have paid the same, discounting interest?

[Objected to for substance.]

37th. Whether or not had the office cash funds to pay the same at that time?

38th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination on the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

F. C. LORING,
For Defendants.

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Cross-interrogatories to be exhibited, on behalf of the complainant, to George W. Houghton, a witness to be examined in behalf of the defendants.

1. If in answer to the sixth direct interrogatory you state that any written application was made by Mr. McKay, will you now revise your answer and state, if you know of your own knowledge, whether when McKay first applied to have said risk written, he brought with him or exhibited any written application or merely a telegraphic despatch and how you know it?

2d. Were you present when McKay first applied to procure said insurance, and if so, state how you know it was the first application, and where, in what place, and at what time of the day was such application made, or are you unable to fix the time and place?

3d. If you shall say you were present when McKay first applied for such insurance, state whether or not such application was made to the President of [illegible]l Insurance Company, and did not said McKay then state or show to the President a telegraphic despatch concerning obtaining said insurance, and did or not said President say to him that he must wait until he should receive the letter mentioned in said despatch before he, the President, could determine the matter as to said risk and writing the same, or words to that effect?

4th. Did or not the President of said Insurance Company have more than one interview with said McKay about said risk before he agreed to write the same, or are you unable to answer from your own knowledge?

5th. If you shall state that any written application was made to your office to write said risk, state whether you do or do not refer to a memorandum made for the purpose of aiding you in filling the policy, as to the principal features of the policy, such as description of the voyage, character of the risk, premium, and the party to whom the loss was to be payable, and can you or not of your own knowledge state whether the same was or was not made after the President of your office had agreed to write said risk, and state how you know what had previously passed between the President and Mr. McKay?

6th. Can you now state with exact certainty the precise language of such memorandum, and the order in which the words stood therein, and if so, state also whether you mean to say that you have given all the words used?

7th. Do you or not know of your own knowledge whether the agreement that said company should write said policy, and what the rate of premium would be, were agreed upon orally before any policy was filled out, and was not the policy in fact made out and delivered the next day after the verbal agreement was made, and state how you know what had passed between the President and Mr. McKay prior to the filling out of said policy.

S. BARTLETT, *For Complainants.*

U. S. Circuit Court,
Massachusetts District, ss:

In Equity.

Edward Oliver
vs.
Commercial Mutual Marine Insurance Company.

Cross-interrogatories to be exhibited in behalf of the complainants to John M. Williams, a witness, to be examined on behalf of the defendants.

1st. If, in answer to the sixth direct interrogatory you state, that any written application was made to you by Mr. McKay, will you now revise your answer and state whether it is true or not that when McKay first saw and applied to you to write said risk, he brought with him, or exhibited to you any written application, or merely a telegraphic despatch?

2d. Where, in what place, and at what time of the day, as near as you can recollect, did said McKay apply to you to write said risk, or are you unable to fix the time and place?

3d. Did not said McKay first call on you and state or show to you a telegraphic despatch concerning obtaining said insurance, and did you or not say to him that he must wait until he should receive the letter mentioned in said despatch, before you could determine the matter as to said risk and writing the same?

4th. Did you not have more than one interview with said McKay about said risk before you agreed to write the same, or are you unable to remember?

5th. If you shall state that any written application was made to you or your office to write said risk, please state whether you do or do not refer to a memorandum made after you had agreed to write said risk and for the purpose of aiding the secretary in filling the policy as to the principal features of the policy, such as description of the voyage, character of the risk, premium, and the person to whom loss was to be payable?

6th. Can you now state with exact certainty the precise language of such memorandum and the order in which the words stood therein; and if so, state them exactly and carefully, and state also whether you mean to say that you have given all the words used?

7th. Whether or not has your health been good for the year last past, or have you been obliged to give up the office of President of said Insurance Company, and when did you quit the same?

8th. Have you suffered any degree of mental excitement during said period from any cause, and has or not your mind been engaged and influenced to any extent or in any manner by your belief or practice of spiritual communications or spiritual rappings, so

called; if so, for how large a portion of the past two years has it engaged your attention, and has it or not, in some degree, alienated your mind from business transactions or influenced the exactness of your memory as to previous occurrences connected with the business of said defendant?

9th. Was not the agreement that said company would write said policy, and what the rate of premium would be, agreed upon orally before any policy was filled out, and was not the policy in fact made out and delivered the next day after the verbal agreement was made?

10th. Did Mr. McKay tell you during the negotiations for said policy that Mr. McLimont was the owner of the Liscard, or make any such suggestion? Answer carefully.

11th. Did you not during said negotiation have a discussion with said McKay as to a deduction required by him to be made from the premium for cash, or have you forgotten about it; if not, state it fully?

12th. When, at what time, and from whom was the defence to said policy that McLimont was the party insured first heard of by you? Was it not first suggested by counsel?

13th. If a broker insures for whom it may concern at the defendant's office, payable to the broker in case of loss, who is entitled to receive the profits or scrip, if there be any?

14th. Did not said McLimont shortly after said policy was written, or at any time and how soon after said policy was written and before you had notice of the loss of said Liscard, make any application to you as the President of said Company, for opening a policy with said company upon merchandize shipped from Great Britain to Canada, or upon any and what business, and was not the nature and extent of said McLimont's business then spoken of, and that his friends favored him with orders from Quebec and Montreal, and was not the said insurance upon the said Liscard talked about, and did he not use or mention the name of Mr. Oliver as the owner of said vessel, or have you forgotten about any such application or conversation? and if not, state all that was said.

15th. Was not a claim made upon said Insurance Company for the insurance on said ship and freight and a copy of the protest left with you, and did you not after that state to the agents of the owners or to any person and whom that you were satisfied with the evidence of the loss, and proposed to pay the loss in sixty days?

16th. Whether or not subsequently and before the expiration of sixty days did Messrs. Lee & Higginson, or either of them, in behalf of the plaintiff, make any application to you to anticipate the payment by receiving a discount or anything to that effect, and did you or not decline on the ground that you had met with many losses, and that it was not convenient to pay till the end of sixty days.

S. BARTLETT, *For Complainants.*

The defendants object to the 7th and 8th interrogatories as scandalous and impertinent, and to the 14th and 16th as impertinent, and to all of them as inquiring of matters not referred to in the direct interrogatories.

F. C. LORING,
For Defendants.

A true copy. Attest, H. W. FULLER, *Clerk.*

Answers of John Williams to interrogatories to him addressed in behalf of defendants.

To the first, he says: I am fifty-six years of age. I reside in Chelsea. I am now an insurance agent. In November and December, 1841, I was President of the said Insurance Company, and as such, my general duties were to receive applications for insurance and to act upon them with the assistance of the directors.

To the second, he says: The applications were made to me, and in general I submitted them to the directors, and then they were acted on by them and myself.

To the third, he says: The President and directors.

To the fourth, he says: I was President, and George A. Houghton was Secretary, and I think (but I am not sure) that James S. Savage was assistant secretary. The names of the directors I cannot state from memory, and reference must be had to the records of the company. In the full board there were twenty-five beside myself, and they so changed from time to time that I could not say who constituted the number at that time, neither I or the secretary were absent at the time; I can't speak positively as to absence of others.

To the fifth, he says: E. R. McKay (I think the name is) made application to me as President to insure ten thousand dollars on the Liscard, and I think five thousand dollars on her freight.

To the sixth, he says: The application was made in writing. I have not it and can't annex it. As far as my recollection goes I saw it with the other papers of the vessel after the question arose as to the insurance, but I can't fix the time; it was entirely a written application and not a printed form such as we usually used, nor can I say where I last saw it; when President I searched for it laboriously and made all the inquiries I could think of, but in vain. I know I received it and it was worded differently from usual appplications—it said to this effect, I think, "insurance is wanted by D. R. McKay, for account of —— McLimont (the initials of the Christian name I forget) payable to McLimont in case of loss—10,000 on the Liscard, valued at twenty thousand, and five thousand on the freight, valued at seven thousand, about—and the policy was made from this memorandum; then the application was placed with the other applications of the day; then after the loss

arose the papers of the case were collected together and this application was then with them. Since then I have no knowledge in relation to it.

To the seventh, he says: I remember distinctly the heading of the written application. It was D. R. McKay, per —— McLimont, and payable to McLimont in case of loss. I think another vessel beside the Liscard was included in the application, her name was the "Wakefield." I find a memorandum I made at the time on the books of the company, and which I just examined, is as follows:

Dec. 1, 1851. Ship "Liscard," Quebec, Canada, to Liverpool, Eng., 10,000 on vessel, valued at 20,000, and 5,000 on freight money, valued at 7,200, 5 1-2.

Ship "Wakefield," Quebec to Greenock, Scotland, 2,500 on vessel, valued 14,000, and 2,500 on freight, valued 6,000, 6 1-2.

But the words of the application I recollect no further than stated above, and I state those only from recollection and not in positive knowledge. However, I know it was made by McKay and payable to and on account of McLimont.

To the eighth, he says: It was made to me or the secretary, and I can't say which. I received it either from the secretary or Mr. McKay, and I conversed with McKay about it before it was acted on. It was acted on by myself, and I think one or more of the directors, but I can't say positively as to the directors, or that I consulted with any of the directors before I gave the policy, though in the ordinary course of business, I should not have acted on it without consulting some of the directors; nor have I any doubt that I did consult some of them in the case, but I have no distinct recollection of it now that I can testify to—nor do I know who of them had any knowledge of the transaction before the policy was given.

To the ninth, he says: The said company, by me its President, made the agreement to insure the Liscard and her freight, which is set forth in the policy of insurance hereunto annexed, and marked (A.) It is the form of policy then used by said company.

To the tenth, he says: None that I know of.

To the eleventh, he says: Yes it does.

To the twelfth, he says; The policy does conform to the application; there is no variance that I know of.

To the thirteenth, he says: All that I know is that McKay made the application for McLimont, and on his account, as McKay stated in the application—so I inferred McLimont was owner. I have no other means of information on the subject.

To the fourteenth, he says: I refer to my answer to the preceding question.

To the fifteenth, he says: I did not know or believe McLimont was not the owner, nor do I know or believe that any officer of the corporation did.

To the sixteenth, he says: I do not think it would have been.

To the seventeenth, he says: I had no knowledge or belief as to Mr. McLimont's profession or business.

To the eighteenth, he says: None.

To the nineteenth, he says: No.

To the twentieth, he says: I never declared any such thing.

To the twenty-first, he says: I think I said to Mr. Lee or Mr. Higginson when inquired of about the payment of the loss, that if everything was right, it would be due in sixty days after date of abandonment.

To the twenty-second, he says: I have seen some letters, I can't say what are annexed to the bill of complaint; but I saw no letters before the policy was issued.

To the twenty-third, he says: I believed it and did not doubt it.

To the twenty-fourth, he says: It is conducted on the mutual plan in which every insurer is a member of the company, and is entitled to earnings according to his interest. In stock the earnings belong to the holders of shares in the corporate stocks.

To the twenty-fifth, he says: D. R. McKay, as the party in whose name the policy issued.

To the twenty-sixth, he says: No, of course not.

To the twenty-seventh, he says: I do not know that I ever saw Mr. McLimont.

To the twenty-eighth, he says: Mr. Lee or Mr. Higginson called on me and requested payment of the loss. He exhibited, I think, at the first interview, only an abandonment, and I think I examined that then.

To the twenty-ninth, he says: I at after times examined the papers produced. I do not here recollect what they were—they were not satisfactory, as Mr. McLimont did not appear to have had any insurable interest in the property, and that the vessel was abandoned under circumstances which made it questionable, if the office were liable, even if Mr. McLimont had been owner of the vessel.

To the thirtieth, he says: I stated so to Mr. Lee or Higginson, either verbally in the company's office or by letter, and perhaps both. I can't recollect what I said; it was in substance as above stated, and I declined to pay the loss.

To the thirty-first, he says: I never so admitted.

To the thirty-second, he says: No.

To the thirty-third, he says: Counsel were consulted only when we were ourselves in doubt.

To the thirty-fourth, he says: Never.

To the thirty-fifth, he says: I cannot recollect that I was so requested; but I might have been, and it made no impression on my mind.

To the thirty-sixth, he says: We should have paid at the end of sixty days, but if we had been in funds we might have discounted interest; it is not usual.

To the thirty-seventh, he says: I do not remember—if not, they would have provided themselves with it.

To the thirty-eighth, he says: I know nothing.

Answers of said Williams to the cross-interrogatories to him addressed.

To the first, he says: I can't now recollect anything about a telegraphic despatch.

To the second, he says: I have no recollection of seeing Mr. McKay at any other place at the application than at the office of the Commercial Mutual Marine Insurance Company, but he might have spoken to me in the street. I recollect the application at the office.

To the third, he says: I have not the least recollection of the matters inquired about.

To the fourth, he says: I think there was more than one interview before I agreed to write the policy.

To the fifth, he says: There was a written application made before it was decided to write the risk, and I made a memorandum embracing the substance of the application after it was decided to write the risk.

To the sixth, he says: I have given the memorandum I made in the words in which it stands on the book of the company. The words of the application I have only given as stated above, nor can I give them further.

To the seventh, he says: My health has been tolerable for the past year. I have given up the President office, and in part on account of my health, which was disproportioned to the care and responsibility. I resigned in January last, I think.

To the eighth, he says: Not in the least that I am aware of to each branch of the question.

To the ninth, he says: An oral agreement was made of course to accept the written application before the agreement was reduced to writing in the policy; but a written memorandum was made from which the policy was made.

To the tenth, he says: I have no recollection of his saying who Mr. McLimont was orally.

To the eleventh, he says: I have no recollection of it.

To the twelfth, he says: I think it was suggested by the secretary in the office on reading the policy after the loss, and just before it came due the secretary and I then talked it over; the time I cannot fix more accurately; the defence was not suggested by counsel.

To the thirteenth, he says: The broker—if made in his name and payable to him.

To the fourteenth, he says: I never saw McLimont nor have any recollection of him, and I never heard of Mr. Oliver till after the loss.

To the fifteenth, he says: Mr. Higginson or Mr. Lee called on me, and the conversation took place I have stated above. A copy of the protest or two protests was left with me. I never said I was satisfied to pay the loss on the evidence, or acknowledged it was due: I was satisfied the vessel was lost, as I have said before. I said if all was right the loss would be due in sixty days.

To the sixteenth, he says: I have no recollection of any such conversation.

To the seventeenth, he says: The same being put by consent of parties subject to the objection to said interrogatory by the plaintiff—

17. After application was made to your office to pay the insurance on the Liscard and freight, did you at any time have any conversation with Mr. Henry Homer, in which you stated that you knew McLimont was an agent in effecting said insurance, or anything to that effect, or that you thought the owner lived in Canada, but had since learned that he lived in England or Scotland, or anything to that effect, or any and what conversation with said Homer in which the question of your knowledge at the time such insurance was effected as to the capacity in which Mr. McLimont acted and as to who the owner was and where he resided or you supposed he resided, was alluded to?

Ans. I remember Mr. Homer came into the office one day and asked if we meant to pay the loss. I told him that it would depend on circumstances. He spoke of McLimont, and I told him I thought McLimont owned the vessel and lived in Montreal. I recollect no other of the matters inquired about.

JOHN WILLIAMS.

[A.]

No. 3228. By the Commercial Mutual Marine Insurance Company.

[In case of damage, by perils of the sea, to dry goods, cutlery or other hardware, the loss shall be ascertained by a separation and sale of the portion only of the contents of the packages so damaged and not otherwise, and the same practice shall obtain as to all other merchandise as far as practicable.]

[Warranted free from loss or damage arising from any cause, if there is grain on board stowed in bulk, except coastwise.]

This policy of insurance witnesseth, that the Commercial Mutual Marine Insurance Company do by these presents, and according to and in pursuance of their act of incorporation and by-laws, and not otherwise, cause D. R. McKay, (a member of said company, pursuant to said act and by-laws,) on account of A. McLimont, loss payable to A. McLimont, or his order, to be insured, lost or not

lost, fifteen thousand dollars on the ship Liscard and her freight, as follows: $10,000 on the vessel, $5,000 on the freight, at and from Quebec, Canada, to Liverpool, England, whereof is master for this present voyage, or whoever else shall be master in the said vessel, or by whatsoever other name or names the said vessel, or master thereof, is or shall be named or called; beginning the adventure upon the said as aforesaid, and to continue during the voyage aforesaid, on the vessel until she shall be arrived and moored at anchor twenty-four hours in safety, and on the property until landed.

[Ship Liscard, valued $20,000. Freight valued $7,200.]

And it shall be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places if thereto obliged by stress of weather, or other unavoidable accidents, without prejudice to this insurance.

[Sum insured, $15,000. Valued at $. Premium included.]
[Premium $825; policy 1—$826.]
[Note —— months.]

Touching the adventures and perils which the said Insurance Company are contented to bear and take upon them in this voyage, and for which the funds only of this company are bound, they are of the seas, fire, enemies, pirates, assailing thieves, restraints and detainments of all kings, princes, or people, of what nation or quality soever, barratry of the master, (unless the insured be owner of the vessel,) and of the mariners, and all other losses and misfortunes which have or shall come to the damage of the said or any part thereof, to which insurers are liable by the rules and customs of insurance in Boston: provided, that the insurers shall not be liable for any partial loss on hemp and flax, unless the loss amount to twenty per cent. on the whole aggregate value of such articles; nor for any partial loss on sugar, flaxseed, bread, tobacco, and rice, unless the loss amount to seven per cent. on the whole aggregate value of such articles; nor for any partial loss on salt, grain, fish, fruit, hides, skins, or other goods that are esteemed perishable in their own nature, unless it amount to seven per cent. on the whole aggregate value of such articles, and happen by stranding; nor for any partial loss on other goods, or on the vessel, or freight, unless it amount to five per cent., exclusive in each case of all charges and expenses incurred for the purpose of ascertaining and proving the loss; but the owners of such goods shall recover on a general average. It is further agreed that the insurers shall not be liable for damage or injury to goods by dampness, change of flavor, or by being spotted, discolored, musty, or mouldy, unless the same be caused by actual contact of sea-water with the articles so damaged occasioned by sea perils. And that the com-

pany shall not be answerable for loss or damage, by wet or exposure to the elements, of goods insured as on deck. And in case of any loss or misfortune, it shall be lawful for the insured, factors, servants, and assigns, to sue, labor, and travel for, in and about the defence, safeguard, and recovery of the said or any part thereof, without prejudice to this insurance, to the charges whereof the said Insurance Company will contribute in proportion as the sum insured is to the whole sum at risk. And so the President and directors aforesaid are contented, and do hereby bind the capital stock and other common property of the said Insurance Company to the insured, executors, administrators, and assigns, for the true performance of the premises, confessing themselves paid the consideration due unto them for this insurance, by the insured, at and after the rate of five and one-half per cent.

(With one per cent. additional if in the North Sea, from 1st Oct. to 1st March, inclusive, and one per cent. additional for each passage to or from Chagres, or ports in Mexico and Texas, except Galveston.)

[In the adjustment of claims for repairs on the vessel, whether in the nature of a partial loss or of a general average, it is specially agreed that instead of deducting one-third for new on the article of copper or metal sheathing, there shall be deducted two and a half per cent. of the net cost of re-coppering, after deducting the value of the old copper and nails, for each and every month the copper shall have been on the vessel when the accident occurred; and if the copper shall have been on forty months or more, the cost of re-coppering shall be wholly borne by the assured.]

And it is hereby agreed, that if the insured shall have made any other insurance upon the aforesaid, prior in date to this policy then the said Insurance Company shall be answerable only, for so much as the amount of such prior insurance may be deficient towards fully recovering the property at risk, whether for the whole voyage, or from one port of lading or discharge to another; and the said Insurance Company shall return the premium, or a rateable part therof, upon so much of the sum by them insured, or for such part of the voyage as they shall be exonerated from by such prior insurance, provided that no return premium shall be made for any passage, whereon the risk has once commenced. And in case of any insurance upon the said whether it be for the whole or part of the voyage, subsequent in date to this policy, the said Insurance Company shall nevertheless be answerable, and the funds only of this company, to the full extent of the sum by them herein insured, without right to claim contribution from such subsequent insurers; and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent insurance had been made. And in case of loss, such loss shall be paid in sixty days after proof and adjustment thereof, the amount of the premium note, if unpaid,

and all sums due to the company from the insured, when such loss becomes due, being first deducted, and all sums coming due being first paid or secured to the satisfaction of the said President and directors, they discounting interest for anticipating payment. It is also agreed, that in case of capture or detention, the insured shall not have the right to abandon therefor, until proof is exhibited of condemnation, or of the continuance of the detention, (by capture or other arrest,) for at least ninety days; and that the insured shall not abandon in consequence of the port of destination being blockaded, but the vessel shall, in such case, have liberty to proceed to another port not blockaded, and there end the voyage, or wait a reasonable time for the blockade of the original port of destination to be raised; and that the acts of the insured or insurers, in recovering, saving, and preserving, the property insured in case of disaster, shall not be considered a wavier or acceptance of an abandonment.

[If there be any lime on board. fifty per cent. to be added to the premiums for the passage.]

[Partial loss on bar, bundle, rod, and sheet iron, iron wire, braziers' rods, iron hoops, tin plates, and steel is excepted.]

It is also agreed that the insurers shall not be answerable for any charge, damage, or loss, which may arise in consequence of seizure, or detention, for or on account of illicit or prohibited trade, or trade in articles contraband of war; but the judgment of a foreign consular or colonial court shall not be conclusive upon the parties, as to the fact of there having been articles contraband of war on board, or as to the fact of an attempt to trade in violation of the laws of nations. It is also agreed that this policy shall be void in case of its being assigned, transferred, or pledged, without the previous consent in writing of the insurers. It is also agreed, that the insured shall not have the right to abandon the vessel for the amount of damage merely, unless the amount which the insurers would be liable to pay, under an adjustment of a partial loss, shall exceed half the amount insured; and in case of a total loss of the vessel with salvage, the amount allowed out of the salvage to the officers and crew, for wages earned, or services rendered previously to the loss, shall be considered as so much of the salvage applied to the use of the ship owners, even although the same should be allowed or paid under the name of salvage, and not as wages, and shall accordingly be deducted in adjusting the loss. It is further agreed, that if any dispute shall arise relating to a loss on this policy, it shall be submitted to the judgment and determination of arbitrators mutually chosen, whose award in writing shall be conclusive and binding on all parties. The company are not liable for wages or provisions, except in general average.

And it is further agreed, that the parties effecting insurance with this company shall not be liable for any loss sustained by said company beyond the amount of their premiums; and the absolute and

contingent funds of the company, pursuant to the by-laws thereof, shall alone be bound for the payment of any loss.

In witness whereof, the President of said Commercial Mutual Marine Insurance Company hath hereunto subscribed his name and caused the same to be countersigned by their secretary, at their office in the city of Boston, this day of December, in the year of our Lord one thousand eight hundred and fifty.

President.

Secretary.

Answers of George A. Houghton to interrogatories to him addressed.

1. To the first: I am forty-four years of age. I reside in Boston, and am cashier in the City Treasurer's office. In November and December, 1851, I was secretary in the said Insurance Company's office; its general duties were keeping books and making out policies either by my own hand or personal inspection of them.

2. To the second: Applications were made to the President, and he and the committee for the week of the directors acted on them; sometimes the President acted alone on them.

To the third: The President.

To the fourth: John Williams was President, and I was Secretary; who were the directors, I can't say, for they were frequently changing, and there may have been vacancies, but J. L. Brigham, Edward Whitney, Joseph Greeley, Ephraim Lombard, Samson H. Lewis, N. W. Bridge, are those I remember whom I think were directors in November and December, 1851.

To the fifth: Such an application was made by D. R. McKay, as I think the initials were, to Mr. Williams.

To the sixth: There was an application in writing, and I think brought in by Mr. McKay in writing. I have not it, and on inquiry at the office of the Insurance Company I have been informed it could not be found. I last saw it so far as I know in December, 1851, at the office of the Insurance Company; the policy was filled from it. I compared the policy with the application and saw the latter there, and I remember putting it with the monthly applications. The policy was made according to the application.

To the seventh, the substance was: "Insurance is wanted by D. R. McKay for account of A. McLimont, on ship Liscard, for $15,000, and I think ship Liscard and *freight*, from Quebec to Liverpool, loss payable to A. McLimont, or his order. This is the substance, the language, except as to the names of the parties, I can't give.

To the eighth: The application was made to Mr. Williams. I don't know as to any other persons acting on it. I know of it, but I can't speak as to others.

To the ninth: The company insured the said vessel and freight. The form was the usual policy produced and annexed to Mr. Williams' deposition.

To the tenth: Not to my knowledge.

To the eleventh: Entirely, as far as I know.

To the twelfth: It conforms exactly I know.

To the thirteenth: A. McLimont was supposed by me to be owner, and the insurance on his account. The form of the application was the only reason for my supposition. I supposed Mr. McKay acting for him.

To the fourteenth: I can't answer further than to the last interrogatory.

To the fifteenth: I have no reason to suppose any other officer had any knowledge or belief other than my own.

To the sixteenth: That was for the President's action and not mine.

To the seventeenth: I had no knowledge or belief as to McLimont's business. I had never heard of him before.

To the eighteenth: None whatever.

To the nineteenth: No, sir.

To the twentieth: No, sir.

To the twenty-first: No, sir, I have no recollection of saying anything.

To the twenty-second: The letters are not produced, and I can't say.

To the twenty-third: I did.

To the twenty-fourth: The office was conducted on the mutual principle, by which insurers share the net profits, which on the other plan belongs to stockholders.

To the twenty-fifth: It would by usage have been carried to McKay's account.

To the twenty-sixth: He would not have been entitled to anything in any case, owner or not owner.

To the twenty-seventh: I never saw him to my knowledge.

To the twenty-eighth: Mr. Lee never called on me. One of the firm of Lee & Higginson came in with papers about the loss, and saw the President; what passed I had not the means of knowing.

To the twenty-ninth: I never examined the papers in reference to any proof. The President once showed me the papers, and I then found a new party claimant, I think a Mr. Oliver. I suggested then the company were not holden.

To the thirtieth: I said nothing to Mr. Lee.

To the thirty-first: No, sir.

To the thirty-second: I inferred the company was not liable.

Thirty-three: Counsel were only consulted in claims apparently unfounded.

Thirty-fourth: No.

Thirty-fifth: I never was.

Thirty-sixth: Paying losses was not my duty.

Thirty-seventh: I can't say; no doubt they had the means on hand of raising it easily.

Thirty-eight: I know nothing.

Answers of said Houghton to cross-interrogatories.

To the first. I know the first thing I said, and the first I knew about the risk was the written application.

To the second. I first saw Mr. McKay conversing on some risk; the result was the application which I got from his desk at about the date of the policy, and between nine and two o'clock of the day. Mr. McKay was conversing with Mr. Williams in the office.

To the third. I know nothing of any of the matters inquired of, except they, the President and Mr. McKay, were some time negotiating.

To the fourth, he says: Mr. McKay may have been there many times; I think he was more than once, but I have no means of knowing what about; he had other risks than the Liscard there.

To the fifth, he says: I don't know what had passed between the President and Mr. McKay; my impression and belief is, that the application was made out not in but out of the office, and brought there. The handwriting puzzled me, and I had difficulty in making out the names; I think it was not in the handwriting of any one in the office.

To the sixth. I have said I did not give and can't remember the language.

To the seventh. I can't answer, for I don't know what passed between the President and Mr. McKay at any time.

GEO. A. HOUGHTON.

UNITED STATES OF AMERICA,
District of Massachusetts:

The third and the fourth day of November, A. D. eighteen hundred and fifty-three, personally appeared before me, the subscriber, the above-named John Williams and George A. Houghton, and being each severally and apart duly cautioned and sworn to speak the whole truth in relation to the cause for which his deposition was taken, each was severally and apart examined on the interrogatories and cross-interrogatories to him addressed, and his answers thereto written down by me in his presence were by him signed in my presence as and for his deposition. Taken by virtue of the commission hereto prefixed and for the cause specified therein.

EDW. G. LORING,
Commissioner.

Commissioner's fees,	$15 00
Witness' fees,	$ 2 50
	$17 50

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U. S. CIRCUIT COURT.

October T., 1853.

EDWARD OLIVER
vs.
COMMERCIAL MUTUAL MARINE INSURANCE COMPANY.

Deposition of J. Williams and G. A. Houghton.

[Taken under commission in usual form.]

Interrogatories to be exhibited to John Williams and George A. Houghton in behalf of the defendants.

1. Whether or not has the application or memorandum for insurance referred to in your previous examination been found? If yea, when, where, and by whom?

2. Please to produce the same and state in whose handwriting it is and by whom it is signed and by whom the pencil-marks thereon were made.

3. Whether or not did the facts therein stated constitute the basis of the agreement for insurance?

[Objected to as leading.]

4. When was the paper attached to said memorandum put on? When and where was it written and by whom? Was either of said papers written in the office of said defendants?

5. Whether or not were these memoranda or either of them exhibited to you before the agreement for insurance was made?

[Objected to as leading.]

6. Whether or not was the memorandum not signed furnished before the policy was issued? If yea, when, by whom, and for what purpose?

[Objected to as leading.]

7. Whether or not at the time when said memoranda were handed to you, were there in the possession of the office any letters relating to the effecting of the said insurance?

8. Upon what facts was the agreement for insurance made, and were the same communicated orally or in writing, or how otherwise?

If in writing, please to produce the same.

F. C. LORING,
For Defendant.

Complainant, without waiving his objections to the foregoing interrogatories puts *de bene esse* merely the following interrogatories:

Will you revise your answer to the 5th direct interrogatory, and state whether you mean by the agreement for insurance the policy of insurance? Was not the agreement for and the terms of the insurance as distinct from the policy made verbally between you and Mr. McKay, without the aid of any other papers except his letters of instruction, and did you pencil figures on said letters fixing or indicating the terms of such insurance?

S. BARTLETT,
For Plaintiff.

Answers of John Williams to the interrogatories to him addressed.

To the first: The application or memorandum has been found as it is now produced to me. I was informed by Mr. Houghton that he found it, but as to the time and place and person I have no personal knowledge.

To the second, he says: It is signed by D. R. McKay, and the body is in the same handwriting apparently. I have no other knowledge of Mr. McKay's handwriting. I don't recollect that I ever saw him write. I think the pencil-marks thereon were made by me; I have no doubt of it.

To the third, he says: Yes, they did constitute the basis of the agreement for insurance.

To the fourth, he says: I can't tell when the paper was attached, or when or where or by whom it was written, except by the signature of Mr. McKay—nor can I say positively whether either of said papers was or was not written in the office of defendant.

To the fifth, he says: Yes, both of them. I have no doubt of that as to the one signed by Mr. McKay; as to the other I have only a belief.

To the sixth, he says: I have no question it was, because the policy was made out conforming to it, and it was furnished for the purpose, but on what day or by whom I can't say positively.

To the seventh, he says: I have no knowledge of any letters whatever.

To the eighth, he says: The facts on which the agreement for insurance was made, were communicated by the memorandum signed by McKay and marked E. G. L. No. 1, by the commissioner.

Answers of said Williams to the cross-interrogatories to him addressed.

To the first: By the agreement of insurance I mean in my answer to the 5th direct interrogatory the memorandum deposed to above as marked E. G. L. No. 1, by the commissioner. Mr. McKay and I verbally agreed to the terms shown in the two memoranda annexed together, and I recollect no other writing whatever, and the pencil-figures indicate the rates of insurance conversed about as I suppose.

JOHN WILLIAMS.

Answers of George A. Houghton to the interrogatories to him addressed.

To the first, he says: It was found on file in the proper month at the defendant's office, at an examination made there at my suggestion and in my presence the day after my examination or the next day.

To the second, he says: I do not remember ever seeing Mr. McKay write, but the memorandum signed with his name he brought to the defendant's office, and I believe both memoranda are in his handwriting and the signature his. I have no doubt from the character of the pencil-marks that Capt. Williams made them.

To the third, he says: I do not know anything of the agreement for insurance except from the policy.

To the fourth, he says: I think the memorandum marked E. G. L. No. 2, was written in defendant's office; I am not positive; when the other was written or by whom either was written I can't swear; the two were put together in the office the day the policy was made out, who by I can't say.

To the fifth, he says: Not to my recollection.

To the sixth, he says: It was furnished before the policy was written by Mr. McKay for the purpose of preparing the policy.

To the seventh, he says: None, to my knowledge.

To the eighth: I do not personally know.

Answers of said Houghton to the cross-interrogatories.

To the first, he says: I referred to the agreement and not the policy; as to the rest of the interrogatory I have no personal knowledge.

GEO. A. HOUGHTON.

UNITED STATES OF AMERICA,
First Circuit, District of Massachusetts:

This thirteenth day of May, A. D. 1854, personally appeared before me at several times the above-named Williams and Houghton, and being severally sworn to speak the truth, the whole truth, and nothing but the truth in relation to the cause for which their deposition was taken, were examined each on the interrogatories and cross-interrogatories to him addressed, and his answers thereto written down by me in his presence after being carefully read over to him, were by him subscribed in my presence as and for his deposition. Taken by virtue of the commission hereto prefixed for the cause therein specified.

EDW. G. LORING,
Commissioner.

Commissioner's fees $5 00.
Witness' fees—
Houghton 1 50.
Williams 1 50.